Appeal Docketed May 15, 2003
Probable Jurisdiction Noted June 5, 2003

No. 02-1674 *et al.*

IN THE

Supreme Court of the United States

MITCH MCCONNELL *et al.*,

Appellants,

v.

FEDERAL ELECTION COMMISSION *et al.*,

Appellees.

On Appeal From The United States District Court For The District of Columbia

JOINT APPENDIX

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DECLARATION OF RAYMOND J. LA RAJA

1. My name is Raymond J. La Raja. I submit this declaration to provide my expert opinion on the following:

(a) The activities and importance of political parties.

(b) The importance of nonfederal money for the effective operations of political parties.

(c) The effect of the BCRA on political parties.

(d) Whether less restrictive alternatives would have been less harmful than a unilateral ban on non-federal funds for national party committees.

I. Background and Qualifications

2. I am an assistant professor of political science at the University of Massachusetts, Amherst where my research and teaching focus on American political parties, elections and campaign finance.

3. I received my bachelor's degree from Harvard University in 1987, and a master's in public policy from the Kennedy School of Government in 1992. I was also a **[*2]** Coro Fellow in Public Affairs in 1988 in California where I gained political experience through internships working for a labor union, the public affairs division of a Fortune 500 company, a not-for-profit organization, and a congressional campaign.

4. I began studying campaign finance and political parties as a graduate student at the University of California, Berkeley where I earned my Ph.D. in political

science in 2001. My doctoral dissertation, "American Political Parties in the Era of Soft Money," examines how political parties spent non-federal funds during the 1990s.

5. I have written on campaign finance and political parties for chapters in edited books, reports for nonpartisan think tanks, and papers for academic conferences. In the past, I have also conducted research on the agencies that regulate elections and campaign finance. My current research focuses on campaign finance laws in the states.

6. I am on the academic advisory board of the Campaign Finance Institute, a non-partisan research organization in Washington, D.C. dedicated to developing ideas for improving the financing of politics. I am also the managing editor of the electronic journal, The Forum, which publishes the applied research of social scientists, historians and legal scholars on a wide range of topics related to contemporary American politics.

7. I have also had the benefit of working on Professor David Magleby's team of researchers that investigated how outside organizations, including political parties, spent money during the 2000 primary election in California. The findings **[*3]** of this study emphasized the pervasiveness and variety of campaign activity by interest groups in federal elections.

8. My curriculum vitae, including my publications during the past ten years, is attached as Exhibit A hereto.

9. In reaching the opinions set forth below, I have focused my comments on the activities of party organizations rather than the broader aspects of the American party system that include partisans in the electorate, party members in

government or the design of electoral institutions. My research gives particular attention to how the political parties spend money rather than contributions to the political parties. I have relied on data from the Federal Election Commission, the Center for Responsive Politics, the National Institute for Money in States and the Center for Public Integrity; surveys I conducted of the state political parties prior to the 2000 Election; my doctoral dissertation; interviews with party officials; declarations of non-party interest groups obtained by the RNC in this litigation; and the political science literature, including the various sources cited herein.

10. I am being compensated for my services in connection with this case at the rate of $175 per hour.

II. Activities and Importance of American Political Parties

11. Political parties are essential institutions in democracies. This is a widely accepted premise among political scientists. In the United States, political parties have played a critical role linking citizens to their government locally and nationally. Through efforts to build coalitions of candidates, officeholders and voters at every level of government, American political parties have been agents **[*4]** of consensus in a society characterized by individualism and diversity of interests. But unlike parties in Europe, American party organizations have not been highly centralized. Instead, political parties at each level have enjoyed considerable autonomy while they work together toward common goals.

(a) American political parties have focused primarily on winning elections rather than pursuing rigidly-defined ideological doctrines. While the major parties have articulated different principles and policies over the years, they choose to emphasize issues that allow them to build diverse and decentralized coalitions. Party leaders have continuously adapted the party organization over the years to

help them build support among voters for the party and its candidates. In the early days of the republic, the party's electoral apparatus grew out of the need to mobilize electoral support among an increasingly diverse and large electorate. As the U.S. population expanded, party leaders and activists developed campaign technologies to attract and bring supporters to the polls. The earliest technologies included party-sponsored newspapers, the distribution of party ballots to voters, and "treating" voters to popular forms of entertainment. Technologies have changed through the decades, but the overriding goals remain the same: to attract support for the party and elect its candidates to office.

(b) Strong organizations are important for political parties and American democracy. Party organizations provide an arena for a varied set of party activists and professionals to coalesce behind party candidates. Among **[*5]** the varied set of political actors in American life, the party organization remains uniquely the ongoing operation that serves the interests of more than a single candidate or set of issues. It is the core "node" in a partisan network that extends from elected officials to candidate organizations, party-allied groups, campaign consultants, and ultimately, the voters. As such, these organizations serve an important function in coordinating party messages, supporting campaigns and building large coalitions.

(c) Parties are an essential institution for promoting political competition, which is a sine qua non of democracy. In a healthy party system, when the party candidates experience defeat at the polls the party organization assumes responsibility for evaluating the loss, for developing new strategies and for marshalling resources to win future elections (see, Klinker 1994; p Herrnson 1994). As the most recognizable organization within an extended party network, an active party committee that coordinates political activities augments accountability in an American electoral

system that is highly decentralized among numerous candidate committees and political action committees.

(d) To maintain strong organizations the parties need to engage in general party building during election and non-election years. By party building I mean efforts to strengthen the capacity of the party organization to perform its traditional functions. These include year-round fundraising, recruiting and training candidates, researching and crafting campaign themes, identifying and mobilizing voters, and educating the public about **[*6]** policy issues. Party building does not include acting as a financial conduit for individual candidates to funnel money into their campaigns.

12. Political parties at every level work together toward common goals. While American party committees have considerable autonomy they rely on each other for information and resources. They are also bound to each other by the success of party candidates at different levels of government office. Martin Van Buren, for example, helped elect Andrew Jackson in 1828 through this important insight. He understood that local candidates benefited from being associated with a popular candidate like Jackson at the top of the ticket. But Jackson needed to get voters to the polls, a task that was ideally suited to local party organizations. The mutual necessities of local and national party figures help establish a thriving party organizational network that generate partisan loyalties in the electorate, economies of scale in campaigns and the sinews that tie local parties to a national party apparatus.

(a) To participate across federal, state and local elections, political parties at each level may keep three separate financial accounts: (1) **federal account**, which includes funds that are raised and spent under the guidelines of the Federal Campaign Election Act and its amendments; (2) **non-federal account**, which includes funds that are raised and

spent under state laws, and which can only be used for state and local elections; (3) **allocation account**, which is a hybrid account that includes both federal and non-federal funds to be used for "party-building" activities that affect party candidates across the ticket. It is my understanding that state parties **[*7]** transfer funds from their non-federal accounts into the allocation accounts for party-building activities that may affect the entire party ticket, and not just state and local elections. In 1990, the Federal Election Commission (FEC) issued rules that established accounting guidelines to determine how much federal and non-federal funds could be allocated to particular activities.

(b) Party scholars observe that relationships among local, state and national organizations have strengthened in the past three decades. They attribute this strengthening to the role of the national parties in providing resources and expertise to lower levels of party (see Herrnson 1988; Bibby 2003). The national committees have raised money to spend on building the state and local parties. They do this by transferring funds, particularly nonfederal funds, to the state organizations. National committees also help state and county organizations develop programs to improve party operations and staff professionalism. Both the RNC and DNC hire personnel in Washington who are chiefly responsible for supporting party affairs in the states, including help for fundraising, voter identification, mobilization, and campaign strategies.

(c) This kind of party activity, coordinated by the national committees, is exactly what prominent political scientists hoped for when they issued their landmark report in 1950 to strengthen American political parties (see supplement to the *American Political Science Review*, vol. 44). By centralizing fundraising, merging party efforts at every level and working **[*8]** closely with candidates, the party committees have tightened the party nucleus, which is a development that encourages greater accountability in the

electoral process. National parties have emerged as strong actors during the past three decades because they have been able to raise sufficient funds to invest in party building programs at every level.

(d) According to John Bibby, a preeminent party scholar who is an especially strong analyst of state political parties:

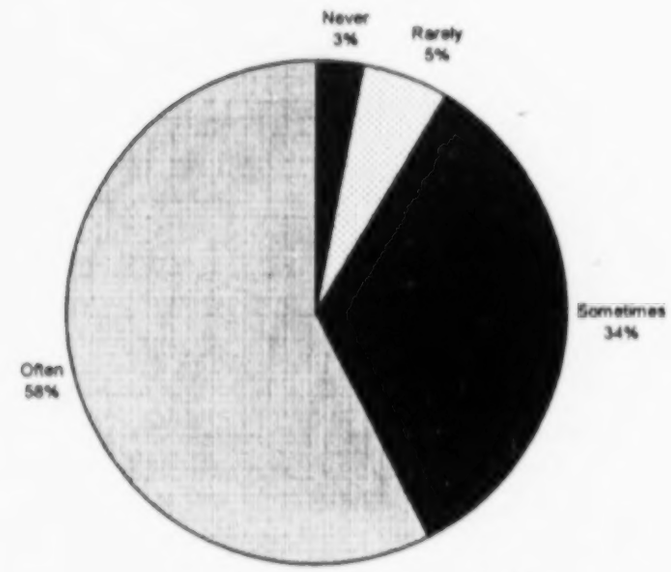
> *Fund transfers from the national organizations to state parties, joint national-state party campaign activities, and national party technical assistance to state affiliates have all resulted in a nationalizing of party campaign efforts and substantially heightened levels of integration between the two strata of party organization. Thanks to assistance provided by the national party committees, many state parties have been strengthened.* (2003:114)

13. Political parties are important agents for recruiting and training candidates. The institution of the direct primary has all but eliminated the ability of political party leaders to handpick their nominees as they did at the turn of the century, but seeking out and encouraging candidates to run for office remains a vital party function. Professors Moncrief, Squire and Jewell (2001) provide examples from Vermont and Alabama where leaders from party organizations that were historically in the minority invested time and resources in local districts seeking candidates to run against the opposition. In V.O. Key Jr.'s classic account of Southern politics (1949), he attributes the transient and demagogic nature of **[*9]** personal political factions in Alabama (as in other Southern states) to the lack of strong party organizations that could provide "a somewhat orderly and systematic means for the

development and grooming of party candidates and a continuity of personnel that encourages at least a germinal sense of group responsibility for party action (1949:46)." In the absence of strong parties, Key argues, Alabama political leaders were "self-appointed and self-anointed and attract to themselves sub-leaders by favor, chance or demagogic skill (p.46)."

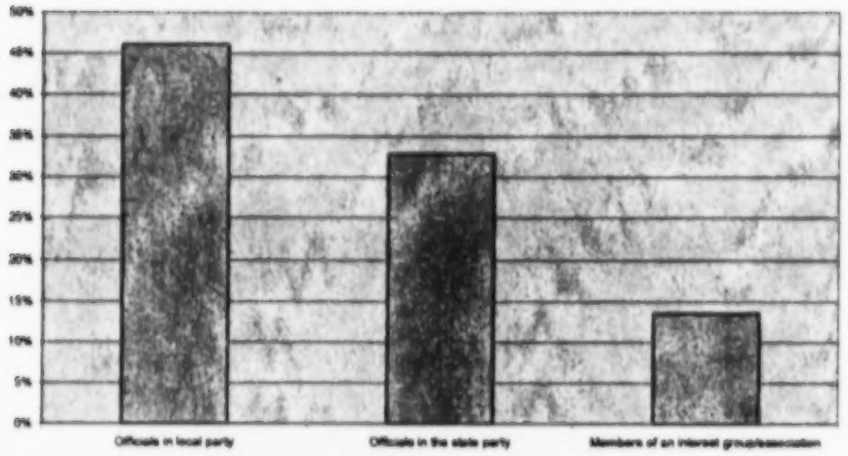
(a) Parties have a strong incentive to invest in recruiting because they want to win majorities in the legislature. They are strategic in their efforts because they look for districts that are winnable and they seek good candidates. Good candidates usually have local name recognition and some experience in public affairs. They have the best shot at winning. In my survey of state party activity during the 2000 election cycle, 54 of 94 major state parties reported that they recruited candidates often and only 3 claimed they never performed this function. Figure 1 below illustrates that for most state parties, recruiting candidates is an important function.

Figure 1. Does State Party Staff Help Recruit Candidates?



(b) Party officials are the most likely source of recruitment contacts for state legislative candidates. According to Moncrief, Squire and Jewell (2001:43), 46% of 535 state legislative candidates that were surveyed said officials in the local party approached and encouraged them to run for office before they announced their candidacy (see Figure 2). About one-third said officials in the state party organizations approached them. In contrast, only 14% were approached by interest groups to run for office. The political party is the most effective agent of recruitment among the many groups that engage in electoral politics.

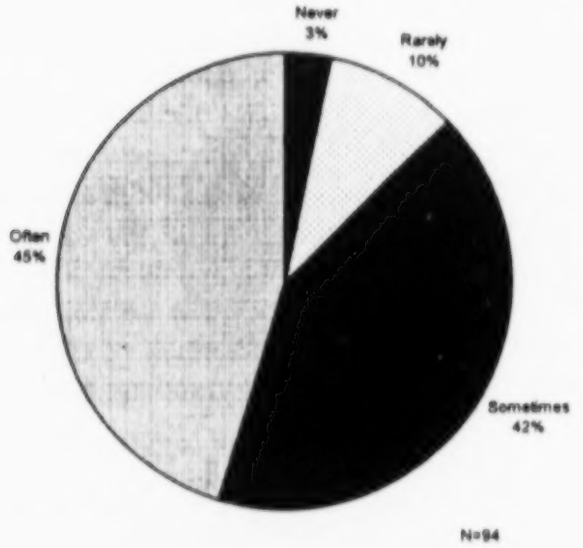
Figure 2. RECRUITING STATE LEGISLATIVE CANDIDATES:
"Before You Announced Your Candidacy,
Were You Approached and Encouraged to Run for Office by Any of the Following?"
(Percent Answering "Yes")



Source: Moncrief, Squire and Jewell (2001),
Legislative Candidate Survey (N=535)

(c) The parties help candidates by training them and their campaign staff. In my survey, almost half of the parties reported they frequently helped candidates this way; only 12 parties of 94 parties said they never or rarely performed this function (see Figure 3). Parties also steer donors to candidates, encourage well-known elected party officials to help the candidate with shared public appearances, and get voters to polls on Election Day (see Moncrief, Squire and Jewell 2001). The promise or refusal of support from the party organization can make an important difference in whether a candidate chooses to run for office, particularly in an era of cash-intensive campaigning that requires skillful application of advanced campaign technologies.

Figure 3. Does State Party train campaign staff who work for candidates?



14. National and state political parties can be an important source of campaign contributions for state level candidates facing tough races. There is wide consensus in political science that parties support challengers more than interest groups, which prefer to contribute to incumbents. The reason for this is rooted in the different incentives of these two groups. Parties desire to win majorities in legislatures so they invest in boosting their control of offices whenever possible. Most interest groups, in contrast, seek to build relationships with officeholders as a way of improving access to the legislative process and lobbying their position. In political science, there is strong empirical support for the theory that interest groups allocate resources primarily to pursue the "access" strategy, meaning they give to candidates who are most likely to win office, which is usually the incumbents (see, for example, Herrnson 2000). Political parties, however, **[*13]** allocate resources for electoral strategies, meaning they

contribute money to a party candidate who is in a potentially close election.

(a) As Figure 5 shows below, parties give more of their resources to non-incumbents than PACs. Interest groups may be reluctant to support challengers because these candidates are generally less likely to win. Supporting challengers also poses the risk of incurring the resentment of the incumbent legislator should he get reelected. The data in Figure 4 shows that PACs are much more likely to contribute to incumbents than political parties. In the 2000 Elections, three-fourths of PAC contributions to federal candidates went to incumbents while parties gave 39% to incumbents. Parties gave twice as much of their resources to challengers (22%) as PACs (11%) in federal elections.

[*14] **Figure 4. PAC Contributions to Federal Candidates 2000 Elections**

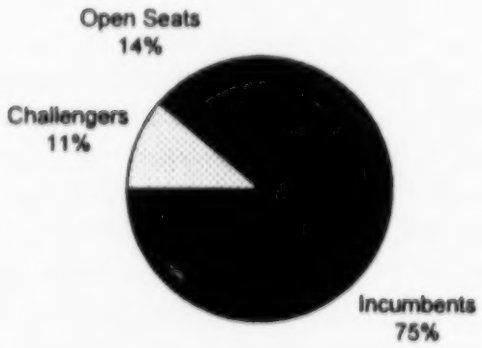
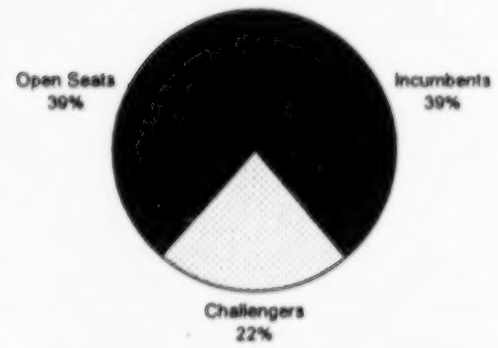


Figure 5. Party Contributions and Coordinated Expenditures for Federal Candidates, 2000 Elections

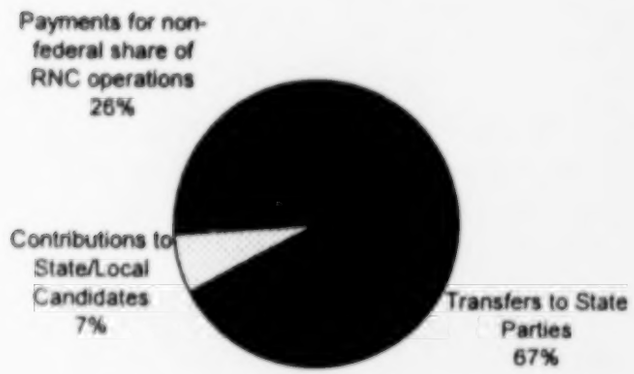


Source: Federal Election Commission

(b) National parties make contributions to state level candidates, including during years when there are no federal races. For example, the RNC contributed roughly $500,000 to the Republican gubernatorial candidate in Virginia in 1999 (Shaw, 2001) as well as substantial funds to the [*15] Republican gubernatorial candidate in New Jersey. The national parties also contribute money to local legislative candidates. During the 2000 election cycle, the Republicans, for example, allocated 7 percent ($9.5 million) of their non-federal funds for contributions to state and local candidates (see Figure 6 below). The national committees contributed a combined $19 million to state and local candidates. By helping state and local candidates win office, the national parties advance their policy agenda and public support for this agenda below the federal level. The desire of the national party to associate with state and local party affairs is also part of a long-term strategy to strengthen the party. National party leaders recognize the importance of developing a "farm team"

of experienced candidates and elected officials who will eventually run for higher office. **[*16]**

Figure 6. RNC Disbursements from Non-Federal Accounts, 2000 cycle



Source: Federal Election Commission

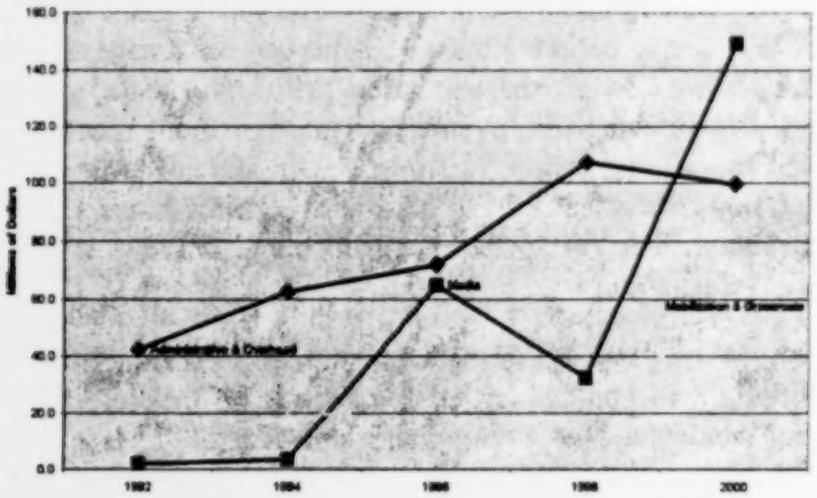
(c) National parties allocate about one-quarter ($136 million) of their non-federal money to party-based operations affiliated with the headquarters in Washington. Of this amount, $57.8 million (43%) went for administration such as paying salaries, benefits, office equipment and supplies. Another $52.6 million was invested in fundraising activities (39%). Only $10.3 million was allocated for media (8%), and $8.5 million for voter mobilization and grassroots activity (6%). A division of labor exists among the levels of parties, with the national organizations taking primary responsibility for administrative functions and fundraising, while state and local parties engage more directly in campaigns and voter mobilization activities.

[*17] 15. National parties assist state parties in raising funds. A common perception is that the national parties

transfer nonfederal money to state parties for the sole purpose of funding issue ads. But national party support of state parties goes deeper than this. For example, the national committees provide expertise to state staff in raising money. Both the RNC and DNC sponsor regional fundraising seminars for staff from state and local parties. The national party staff can be invaluable in showing state party workers how to organize operations for fundraising and telemarketing. These tasks require considerable experience, which is often lacking in smaller states where staff turnover is high and much of the work is done through volunteers.

(a) National party transfers to state organizations also help with party building. Transfers from national parties are allocated for administration (which includes salaries, benefits, office equipment and supplies), voter mobilization and media campaigns. As transfers to the state parties increased so did spending on state party work. Between 1992 and the 2000 election cycles, spending on voter mobilization increased steadily from $9.6 to $53.1 million (see figure 7 below). **[*18]**

Figure 7. Soft Money Spending by State Parties, 1992-2000



(b) The most dramatic increase in state party spending was for media activities during presidential election years for issue ads. The emergence of significant amounts of issue advertising by state parties in 1996 is rooted in the deficiencies of a presidential public funding system that is severely out of step with important changes in the electoral season. Presidential primaries are "frontloaded," meaning that a party nominee emerges several months before the national conventions. Under this circumstance, the parties face what political scientists refer to as a "prisoner's dilemma" during the period leading up the party convention. Both parties can wait several months until their respective conventions when public funds are released to their presidential candidates for the general election. Alternatively, they can begin to set the issue agenda **[*19]** before the convention. The dilemma is complicated by the number of issue groups that have a strong incentive to shape the political dialogue by broadcasting messages early in the electoral process.

(c) The wide open period gives an advantage to any political party or interest group that chooses to broadcast issue ads before the conventions. If both parties and interest groups forego issue ads during this period, then the election will be fought during the few months beginning after the convention. If one party or major interest group decides to move earlier, it has a compelling advantage to set the policy agenda for the upcoming presidential campaigns. The fear of leaving an advantage to the opponent spurs the parties and interest groups to move first. Issue ads before the convention reflect an effort to capture this policy space rather than relinquish it to opponents and factional interests within either of the parties.

(d) It is my understanding that the BCRA does not allow political parties to air issue ads that refer to a federal candidate at any time using non-federal funds. The BCRA also prohibits interest groups from airing issue ads with non-federal funds during a blackout period. This does

not prevent interest groups from using non-federal funds early in the election by "frontloading" issue ads to set the policy agenda for presidential and other elections. If the last provision barring interest groups from using non-federal funds for issue ads during a blackout period does not withstand constitutional scrutiny, the political parties will be at even more of a **[*20]** disadvantage relative to interest groups since the latter will have relatively more ability to communicate their messages up through Election Day. Interest groups already dominate issue advertising (see section III. 1.b).

(e) While it is apparent that national committees target party building in competitive states, it is also true that every state party receives money from them, even if there are no competitive federal elections in the state. According the Marianne Holt, who led the "Outside Money" project for the 1998 elections sponsored by the Pew Charitable Trusts, the transfer of national party funds for GOTV drives "has increased the state and local party role as they spend more and more soft money....Such campaign activity has not only strengthened the national party committees but has infused the state parties with a vitality and power not seen in the past two decades." (see Magleby 2000)

16. Political parties use nonfederal money to develop and disseminate political messages. The national parties possess research divisions that focus on message development through the use of polling data and focus groups. In conjunction with the party leadership in government, party operatives craft issue themes that will frame the party's policy and campaign agenda. The national party committees help to coordinate the daily flow of political messages by sending out faxes and e-mails to the parties' elected officials at every level. The state parties also send out similar political information related to state policy issues and campaigns.

[*21] (a) Nonfederal money is used to spread the party message. In place of the traditional party newsletter,

political parties now commonly use e-mail to spread the word among adherents. Every major state party has a web site where voters can get information about candidates and opportunities to serve the party. One of the most important and expensive methods of reaching partisans is through direct mail. The state political parties devote as much as 22 percent of nonfederal funds from their nonfederal accounts for this activity according to data provided by the Center for Public Integrity. Direct mail is useful because the parties can pursue several goals simultaneously: raise money, explain the party position on issues, and contrast their position with the opposition. Direct mail tends to be targeted toward the party's loyal or likely voters.

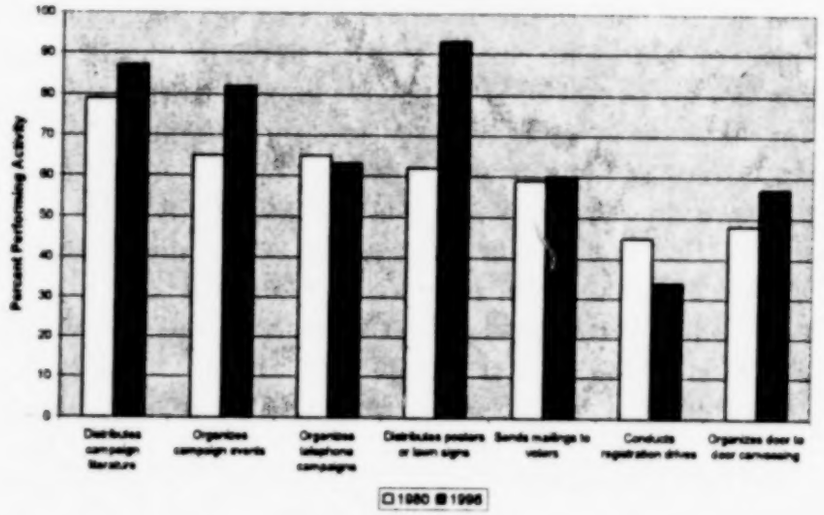
(b) Political parties also use broadcast media to spread their political messages. Broadcast media are particularly important in persuading "undecided" voters to side with the party and its candidates. Usually, party-based ads focus on selected issue themes developed before the start of the electoral season. The fact that these ads are sponsored by the national or state parties and used throughout the nation gives them a generic "cookie cutter" quality (see Krasno and Seltz, 2000: 198). Local candidates sometimes dislike this generic quality but the similarity of themes provides some policy coherence across party candidates. The theme-focused party ads encourage accountability in elections since voters will be able to know what the party candidates stand for collectively. **[*22]** Even when voters do not recognize the link between party-based ads and party candidates, institutional intermediaries, such as the news media, help make these links for the voter.

17. At the grassroots level, political parties mobilize volunteers and develop local support for the party and its candidates. The state political parties provide the support infrastructure that allows local volunteers to reach out to voters. They do this by creating detailed voter lists, operating phone banks, developing precinct maps for

canvassing, purchasing yard signs and bumper stickers, and handling all the administrative paperwork involved with purchases and filing with the election regulatory agencies in the state and with the Federal Election Commission.

(a) Grassroots efforts at the local level have increased or been maintained since the 1980s. According to a survey of 335 local Republican committees by Frendreis and Gitelson (1997), a greater percentage of these organizations have been getting involved in a variety of grassroots efforts that Congress wanted to spur through its amendments to the FECA in 1979 (see Figure 8 below). For example, the percentage of committees distributing posters and lawn signs has increased from 62 to 92 percent between 1980 and 1996. The Democratic local committees show similar gains. **[*23]**

Figure 8. Grassroots Activity of Local Republican Party Organizations, 1980 and 1996



Source: John Frendreis and Alan R. Gitelson, "Continuity and Change in Electoral Roles of Local Parties," a paper prepared for delivery at the State of the Parties: 1996 conference, Ray C. Bliss Institute of Applied Politics, University of Akron, Oct. 9-10, 1997, as cited by Bibby (2003:136).

(b) The modern party organization relies heavily on outside campaign consultants to do much of its work. By "outsourcing" particular tasks to professionals, the modern party organization has adopted some of the same administrative strategies as contemporary business firms, governmental agencies and not-for-profits. One important aspect of the relationship between the party organization and its consultants is that the latter tend to work for only one of the major parties. In fact, many consultants gain political experience working for the party organization early in their careers. While some casual observers of politics may lament that politics has been overrun by "hired guns" working for any candidate **[*24]** with money, more acute observers have remarked how consultants constitute an extended network of party activists (see Kolodny and Logan 1998).

(c) What may be striking to the historian of political parties is how much more professionalized these operations are than in the days when party precinct captains routinely walked the local streets, building face-to-face support for the party. Earlier party organizers, however, relied on the best available technology to suit their needs. The modern party exploits new technology to achieve the same goal of spreading the party message and electing its candidates to office. That is why party workers employ many strategies developed by commercial enterprises to identify and inform citizens: direct mail, surveys and telephone calls. Political organizations need to reach large and dispersed audiences with their political messages, while competing in a broadcast and print environment saturated with entertainment and commercial information. For this reason, it is hardly surprising that they avail themselves of the latest communication technology and strategies.

(d) To perform the activities I have mentioned above, political parties need money. While party historians describe an era when the party organization relied on armies of volunteers to perform campaign activities, the

modern party relies more on professionals to perform its work. In this they are no different from other modern organizations, including the many civic organizations throughout the nation. Increasingly, civic **[*25]** organizations and interest groups rely on "checkbook" volunteerism to perform their work (see Putnam 2000; Verba, Schlozman and Brady 1995). Citizens make contributions to favored organizations where professional staff executes the work to advance the goals of members.

(e) Political parties rely more on professionals because they seek to reach out to voters with sophisticated technologies that require special expertise. These technologies include public polling, direct mail, telemarketing and broadcast advertising. Similarly, non-party interest groups, such as EMILY's List and the National Rifle Association have come to rely on the same kind of professionals to reach out to their members.

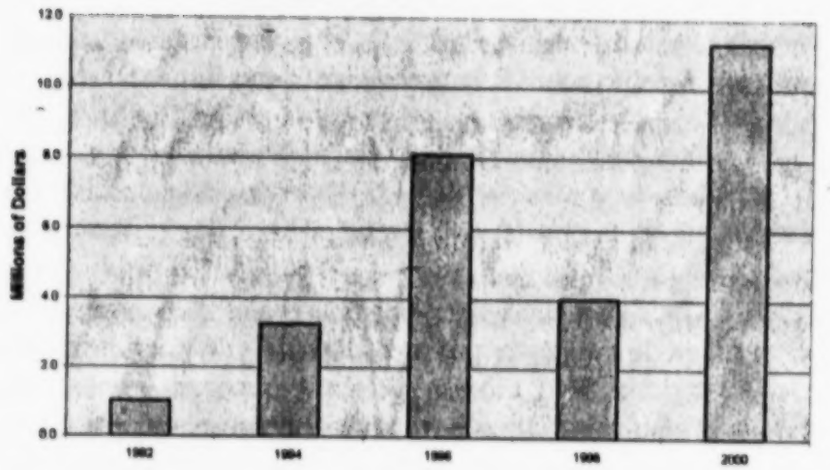
(f) While party activity at the national and state level has assumed a professional cast, party volunteers remain important at the local level. These volunteers usually participate in the weeks before Election Day. The ebb and flow of volunteers today appears no different than in the past. While conventional historical accounts of political parties suggest that citizens attended party meetings and rallies year-round, recent historical research suggests otherwise. The flow of partisan volunteers into politics was highly seasonal, and a rather small, core group of dedicated activists managed party affairs day-to-day (see Altshuler and Blumin 2000). Today, the modern party organization is also managed by a core of activists. The emerging strategies they adopt reflect the realities of changing technologies and demographics.

[*26] 18. Political parties provide the campaign "hoopla" that has been a staple of American politics. I define campaign hoopla as the traditional public display of partisan symbols such as yard signs, banners and bumper stickers,

along with the revelry among partisans in the form of rallies and speeches in public spaces. In the aftermath of the FECA and its amendments, much of this hoopla was depressed because candidates – particularly the presidential candidates -- were afraid these displays of partisan ardor might be counted as political contributions that would violate the federal laws.

(a) Some professional campaign practitioners are skeptical of spending money on these kinds of grassroots activity. They see it as "wasted money" that could be spent getting voters to the polls or for more advertising. But this hoopla is important for generating enthusiasm about political campaigns and building the morale of party activists. An enthusiastic group of party activists are likely to spread the word among friends and neighbors, getting others involved in campaigns. In this way grassroots hoopla may generate network effects that encourage greater awareness about the party message and participation in campaigns among party activists. Based on my analysis of the reports filed with the FEC, state political parties spent $11.3 million in the 2000 cycle on party "hoopla," which I define as distributing yard signs, bumper stickers, banners, pins, holding rallies and fairs, and other volunteer work (see Figure 9 below). In contrast to the conventional wisdom, this sum reflects an increase over the decade. Between the midterm elections, 1994 and 1998, party spending on hoopla **[*27]** increased from $3.3 to $4 million. The growth during presidential elections has been more prominent: $1 million in 1992, $8.1 million in 1996, and $11.3 million in 2000.

Figure 9. State Party Non-Federal Disbursements on Grassroots and "Hoopla"



19. Parties mobilize voters by identifying likely supporters, registering them and getting them to the polls on Election Day. Since the early days of the Republic, political parties have been important agents of mobilization. In the so-called "heyday" of political parties, the organizations used a variety of techniques to get voters to the polls. They helped immigrants gain citizenship, registered voters, sponsored popular entertainments at the polling booth. The techniques have changed and parties face stiffer competition to get the attention of voters. Between the 1992 and 2000 election cycles, the combined nonfederal spending by 100 major state parties to mobilize voters increased from $8.6 to $41.8 million **[*28]** (see Figure 7 earlier). It is difficult to evaluate how this spending affects turnout, and there is vigorous debate among political scientists about factors that affect turnout. According to a two scholars from MIT, the reduction of party non-federal funds could decrease voter turnout by slightly more than two percentage points, which represents about two million voters (see Ansolabehere and Snyder, 2000:617).

III. Importance of nonfederal money for the effective operations of political parties

20. Political parties use nonfederal money for issue advertising, including advertising that relates to state and local elections when a candidate is mentioned.

(a) Party spending on media activities reflects efforts to win support for the party and its candidates. Broadcast media efforts are targeted usually toward the undecided voters, in contrast to "ground" mobilization strategies, i.e., direct mail, telephone calls and canvassing, that urge partisan loyalists to go to the polls. While most ads occur during the final months of the campaign season, the parties will also spend money outside the campaign season to bolster support for particular party policies, or to challenge the policies of the opposition. The Democrats pursued this strategy in 1995, when the party sponsored ads attacking the Republicans in Congress on the issue of shutting down the government during the budget stand-off. The Republicans aired issue ads nationwide during discussions of the balanced budget amendment and welfare reform legislation.

[*29] (b) Political parties compete with interest groups when airing political ads. Political parties accounted for a little less than one-third of issue ads in the 2000 cycle, while interest groups accounted for two-thirds according to a report by the Annenberg Public Policy Center at the University of Pennsylvania. The Republican Party spent $83.5 million (16% of total) and the Democratic Party spent $78.4 million (15% of total). One non-party group, Citizens for Better Medicare, which is funded by the pharmaceutical industry, spent almost as much money on issue ads as either political party (see Figure 10 below). Overall, the top six non-party spenders accounted for almost one-fourth of issue ads for the cycle. The APPC reports notes that political party spending may be under-represented because researchers counted party spending only in the 75 largest media markets.

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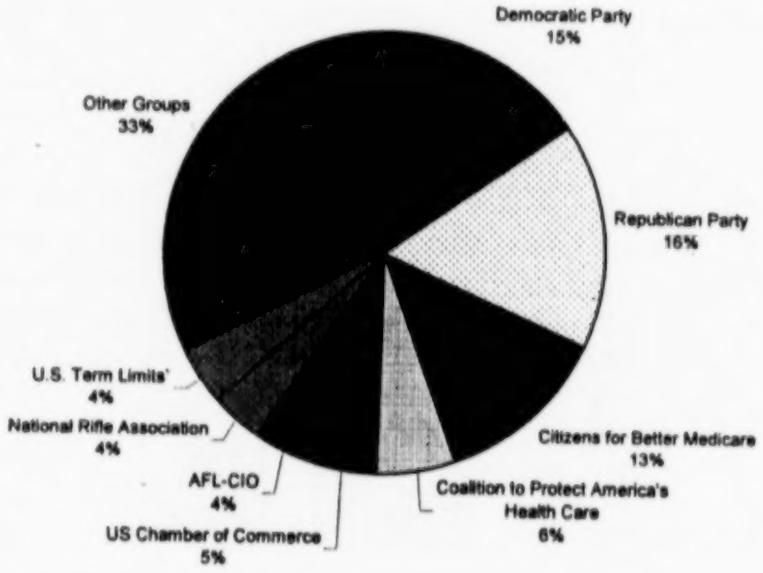
These figures, however, closely match my own data on party-based issue ads collected by examining financial reports filed with the FEC. The APPC data on issue ads reveal the breadth of interest group spending that competes with parties to disseminate political messages. Under the BCRA, the percentage of ads sponsored by non-party groups is likely to rise because national parties, unlike interest groups, will be required to pay for all advertising with federal money, regardless of when they are broadcast. State and local parties will have fewer resources to broadcast ads because they can no longer receive nonfederal funds from the national committees.

[*30]

Figure 10. Issue Ad Spending for the 1999-2000 cycle



Source: Annenberg Public Policy Center

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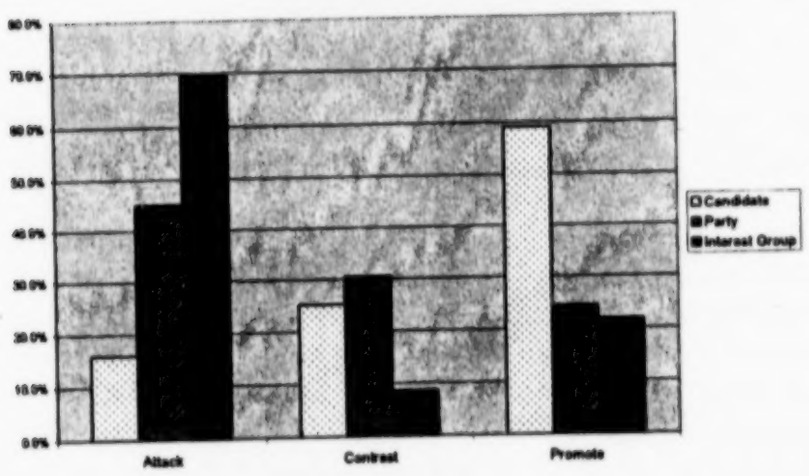
(c) The rate of growth for interest group advertising is rising faster than for political parties and candidates. According to data compiled by the Brennan Center for the 1998 calendar year, interest groups spent 42 cents for every dollar that the parties spent on advertising (electioneering and issue ads combined). In 2000, interest groups closed this gap considerably by spending 60 cents for every dollar the parties spent. If the national political parties are not able to raise and spend soft money for issue advertising this gap will diminish even more.

(d) According to the most recent data from the Brennan Center in 2000, interest group advertising that mentions federal candidates was more negative than similar party-based advertising (see Holman 2001). Figure **[*31]** 11 illustrates that almost 70 % of ads aired by interest groups were "attack" ads, while 45% of ads aired by parties were attack ads. Parties also aired more "contrast" ads, which tend to help viewers recognize key differences between the parties' candidates. Under the BCRA, it is conceivable that additional spending by interest groups will result in more negative advertising.

Figure 11. Ads by Candidates, Parties and Groups that Attack, Contrast or Promote Candidates



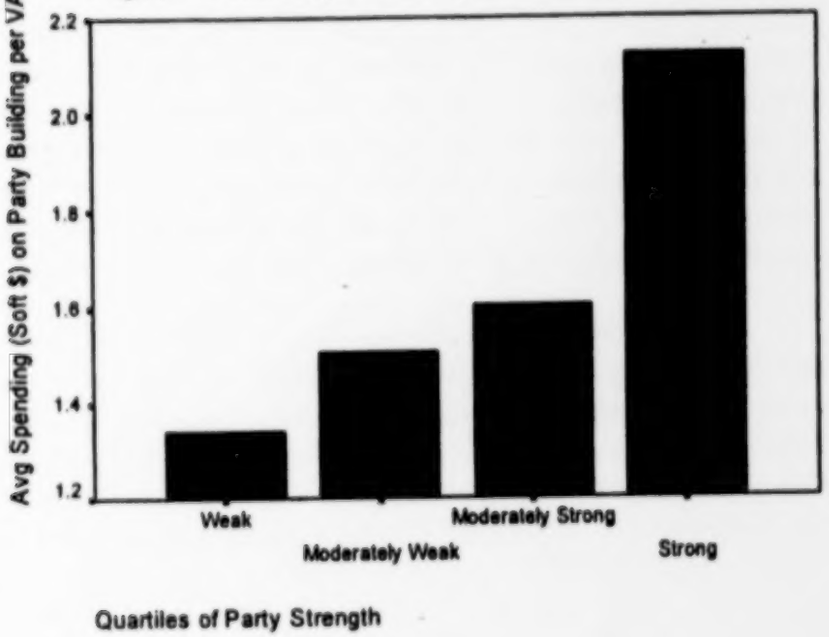
Source: Brennan Center

21. Nonfederal money helps parties perform important traditional party **[*32]** functions. My research shows that state political parties that spend more nonfederal money per voter tend to have stronger organizations. By stronger organizations I mean those that retain sizeable year-round headquarters and perform traditional party functions frequently, such as recruiting and training candidates, and running party-wide mobilization programs.

(a) To assess the relative strength of political parties, I sent out questionnaires to all 100 major state party organizations about the size and scope of operations and received responses from 94 organizations. I created a cumulative index of "party strength" based on how frequently the party said it performed several activities, as well as the size of party staff and off-season budgets.

(b) Stronger organizations possess relatively more staff per voter, and engage in party-based activities more frequently such as recruiting, mobilizing voters, researching the opposition party, conducting polls and helping train activists and volunteers to help candidate campaigns. For ease of comparison I arranged the parties into quartiles of party strength: weak, moderately weak, moderately strong and strong (see Figure 12 below). I then observed whether the amount of nonfederal money that state parties spent between the 1992 and 2000 election cycles (adjusted for the size of the voting population) corresponded with the relative strength of the parties.

Figure 12. Party Building and Party Strength

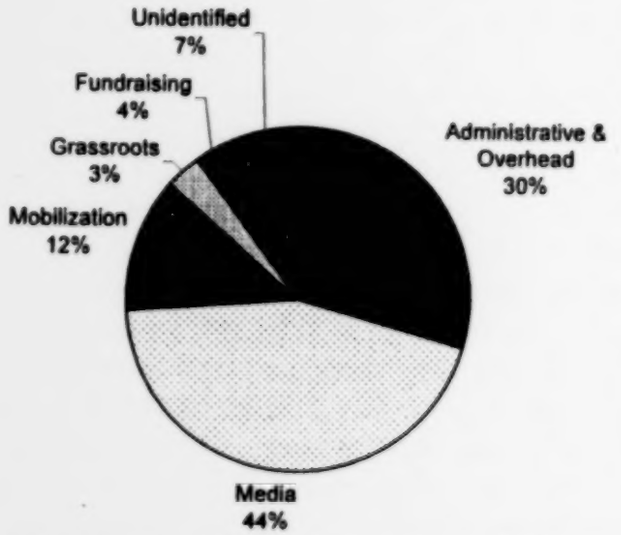


(c) The weakest state organizations spend the least amount of nonfederal money, while the strongest parties spend the most. This linear relationship shows that parties invest nonfederal money in party building activities. The more they spend nonfederal money, the larger the organization and the more activities they perform. This finding implies that state parties have not been merely conduits to pay for issue ads with nonfederal money as depicted in the news media. Instead, party spending reflects genuine investments in party-based work. I would not go so far as to argue that nonfederal money, by itself, creates strong political parties because the causal mechanism linking spending and party strength is difficult to untangle. For example, strong party organizations tend to be better at raising money. It seems clear, however, that reducing party budgets **[*34]** through a ban on soft money for national parties will

likely weaken party organizations by reducing their activity and presence during both non-electoral and electoral seasons.

22. Transfers of nonfederal money from the national committees to the state committees have helped sustain or expand state party activity. The amount of transfers from national organizations to state organizations has increased from $18 million in the 1992 cycle to $279 million in the 2000 cycle. The national committees of the Republican Party provided more than half of nonfederal receipts for its state party affiliates during the 2000 Election Cycle (adjusted from "swaps" of federal money transferred to national committees). The national committees of the Democratic Party provided 63% of state party nonfederal receipts. The conventional wisdom is that all the money went into issue ads that benefited federal candidates. But this is not so. While 44% went for media-related disbursements, almost half of nonfederal money paid for party building activities such as administration and voter mobilization (see Figure 13). **[*35]**

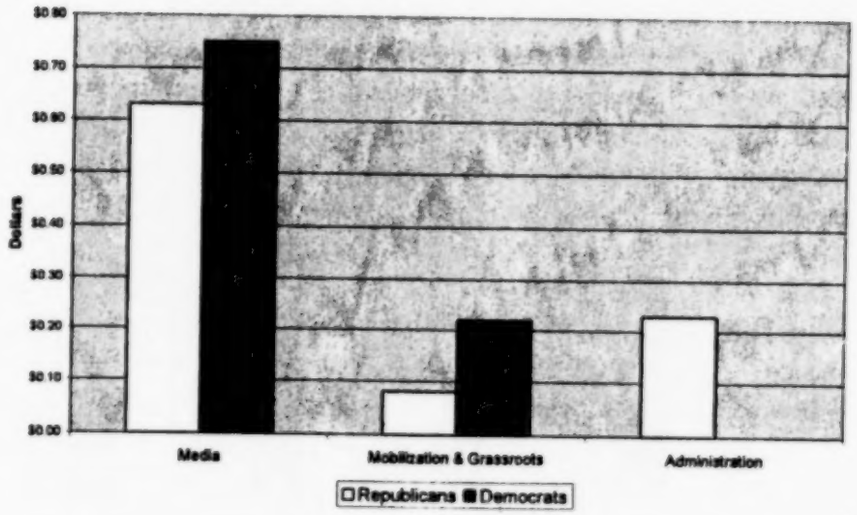
Figure 13. State Party Non-Federal Disbursements, 2000 Cycle



Source: Federal Elections Commission; data compiled by author.

(a) My doctoral research suggests that these transfers have enabled the state parties to perform more activities. Supporters of the BCRA have tended to focus on how the transfers to state parties are associated with increased spending on media. While this is certainly true, it should not be forgotten that the state parties use nonfederal money for other kinds of efforts. For example, an increase of one dollar transferred between 1994 and 1998 from national committees of the Democratic party to a state party resulted in an additional 22 cents of spending on mobilization activities such as voter identification, phone banks, direct mail, canvassing, and various forms of grassroots activity (see Figure 14 below; these estimates have been controlled for changes in the competitiveness of U.S. Senate, U.S. **[*36]** House, and gubernatorial contests in the states between 1994 and 1998). Similarly, a dollar increase in transfers by Republican national parties was associated with an increase of 23 cents on administrative spending and 8 cents for mobilization activities. In 1979, Congress intended to encourage this kind of party-based mobilization and grassroots activity when it amended the Federal Election Campaign Act.

Figure 14. The Effect of an Additional Non-federal Dollar Transfer between 1994 and 1998 Elections on State Party Activity

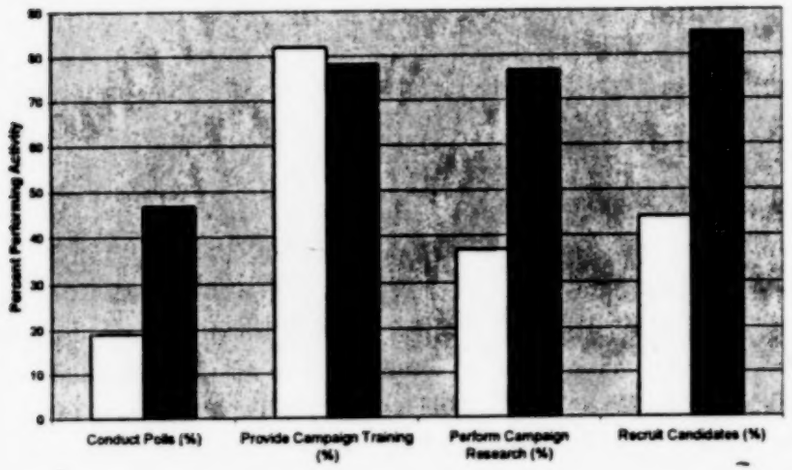


See Appendix A for OLS coefficient estimates.

(b) Since 1979, when Congress passed these amendments to strengthen party organizations, parties appear to have gotten stronger. I compare data on political parties collected in 1980 (see Cotter et al., 1984) with the data I collected during the 2000 election cycle. On almost every measure for **[*37]** which my survey questions match the 1980 questionnaire, political parties appear to be more active today than in 1980 (see Figure 15 below). For example, in 1980 only 44% of the Democratic state parties recruited candidates while in 2000 cycle, 85% performed this activity. Similarly, the size of the organization has increased as measured by the number of employees, the size of budgets during the off-election year, and the existence of permanent party headquarters. The Republicans made solid gains as well, although not as dramatic because they began their party building efforts in the 1960s under RNC chairman, Roy C. Bliss (see Herrnson 1988; 1994). While I would not argue that the Democratic Party began its party building efforts with

the rise of non-federal funds, it seems apparent that non-federal funds helped them expand party-based operations. **[*38]**

Figure 15. Democratic State Party Activity, 1980 vs 2000

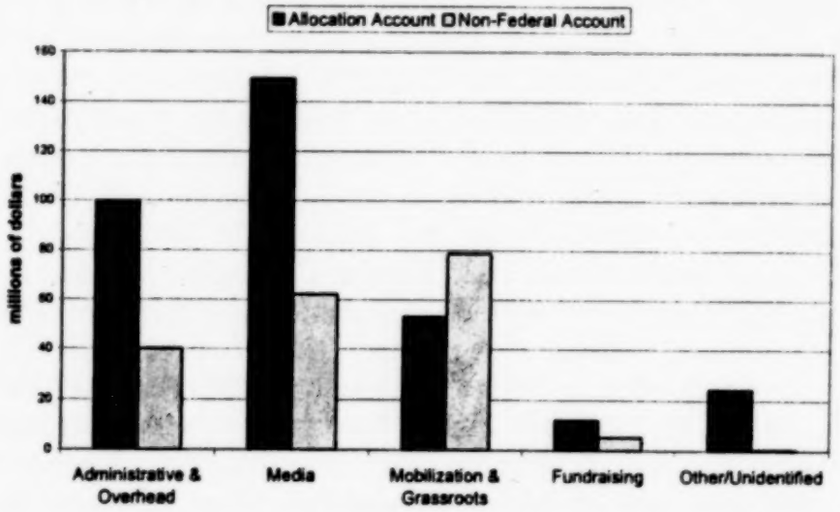


(c) Political parties work closely together through the exchange of nonfederal funds. By transferring funds among party committees, the party organizations increase interdependence and create an efficient use of campaign funds. The parties trade nonfederal dollars for federal dollars to meet specific needs of the campaigns in each state. In states where campaign finance laws permit parties to raise funds in larger increments than allowed under federal laws, these parties may transfer money they raise under "hard" limits of federal laws to states that need federal funds. In return they receive nonfederal dollars. The necessity of trading funds among parties provides opportunities to strengthen the party network across state boundaries and encourage party solidarity.

[*39] 23. National and state political parties use nonfederal dollars for nonfederal election activity. According the Center for Public Integrity, the state party organizations spent $232 million exclusively from the nonfederal accounts.

This money was spent on candidate contributions and party building activities that included voter registration, direct mail and various forms of get-out-the-vote strategies; it does not include transfers to other party committees. It should be emphasized that these disbursements are in addition to the sums of nonfederal money that the state parties reported to the Federal Election Commission in their allocation accounts. Figure 16 (see below) shows party nonfederal spending in the nonfederal account and the allocation account. Combined party disbursements on mobilization and grassroots in both accounts amounted to $132 million. While media activities account for 40% of nonfederal disbursements, state organizations invested one-quarter of their funds in "ground" mobilization activities. **[*40]**

Figure 16. State Party Non-Federal Spending, 2000 Cycle



IV. What will be the effect of the BCRA on political parties?

24. The ban on non-federal funds to national political parties will likely divert nonfederal money toward interest groups. Political parties compete with interest groups for donations. They also rely on some interest groups to

donate money to them. Under the BCRA, donors may not give nonfederal money to the national parties, but they may continue to donate to interest groups or state and local parties in some states. Interest groups will take advantage of the vacuum left by the national committees to raise the nonfederal funds that parties have raised in the past. According to recent articles in the Washington Post, interest groups are already positioning themselves to recoup the funds that parties will not receive once the BCRA takes effect. The Washington Post reports that lobbyists and **[*41]** activists are already developing strategies to develop "non-party vehicles to take soft money to pay for commercials, voter-mobilization, and other programs" designed to help candidates. (see Edsall and Eilperin, 8/18/02).

(a) Under the BCRA rules, several types of interest groups may continue to spend non-federal funds. For example, 527 and 501(c) organizations may use their non-federal funds to inform and mobilize their members and supporters. Professor David Magleby has shown that outside groups target key races with issue ads and voter mobilization programs. He estimates that 211 interest groups communicated with voters in the 17 most competitive congressional races during the 2000 cycle (see Magleby 2001). The number of outside groups engaged in issue ads and mobilization is likely to increase under the BCRA.

(b) Professor Emeritus, Herbert Alexander, the dean of scholars in the field of campaign finance and former Executive Director of the Citizens' Research Foundation, concurs with this opinion. He argues that "an examination of some serious problems affecting the electoral system indicates that the problems will remain and probably be exacerbated by the new law." Notably, Professor Alexander believes that "soft-money PACs and unincorporated associations will seek out soft money that formerly went to the parties...." (Alexander 2002).

(c) The largest and wealthiest interest groups have viable alternatives for using non-federal funds in elections if they cannot donate it to the political parties. Based on my research with Apollonio (2002) and that of Malbin, **[*42]** Wilcox, Rozell and Skinner 2002, it seems likely that groups that were the largest single non-federal funds donors to parties, such as labor unions and issue groups with large memberships, should benefit from the new laws because they have various options. These groups will substitute for non-federal funds donations to parties with direct membership mobilization and additional federal contributions to candidates. Large business organizations may do likewise, although they frequently lack the structural advantages to mobilize voters that membership groups possess. These groups gave to political parties in the past because of party fundraising requests, and because interest group leaders understood that the party was the most effective coordinator of campaign activity, i.e., the parties use resources efficiently across numerous elections. It is likely that membership groups, such as the AFL-CIO or NARAL will invest their nonfederal funds in their own campaign operations now that they cannot donate them to the national committees.

(d) Even if the provision imposing a blackout period on interest group issue ads paid for with non-federal funds is upheld, the national parties remain at a disadvantage relative to interest groups since the latter may continue to defray non-media costs, such as administration and voter mobilization, with non-federal funds. Under the BCRA, the national committees must pay for everything with federal funds. State parties will also suffer since they have come to rely on national party non-federal funds for party building activities.

[*43] (e) The organizations that gave both federal and non-federal funds will likely shift additional resources into federal funds contributions and lobbying. Those that are effective at electoral politics will invest additional amounts

into campaigns that include member mobilization and issue ads. EMILY's List and the National Rifle Association will do particularly well under the provisions of the BCRA. They will be able to bundle contributions from members and channel them to favored candidates. They may also use their nonfederal funds to mobilize members and broadcast issue ads outside the blackout period prior to elections. Some activists are also forming 527 committees that may continue to raise and spend non-federal funds. For example, the founders of DaschleDemocrats.org claim they are completely independent from Senate Majority Leader Tom Daschle. The committee is headed by several former senators and Clinton administration officials. Even Senator McCain, a sponsor of the BCRA, acknowledges that groups may get around provisions that attempt to limit the use of nonfederal funds (see Edsall, 4/11/02).

(f) The largest non-federal donors are already giving significant amounts of federal (hard) money. My research with Apollonio on interest group political contributions shows that the median amount of federal money contributed to candidates is greater than $78,000 for groups that give both federal money to candidates and non-federal money to parties (data provided by the Center for Responsive Politics). The median non-federal **[*44]** donation to political parties for this group of "dual" donors is only $25,000. For groups that give only federal money to candidates the median federal contribution is slightly more than $10,000. These figures indicate that non-federal donors already dominate the federal money system of political contributions; they will have little trouble adjusting to a system that prohibits non-federal donations to national party committees.

(g) The number of groups that donate non-federal money is much larger than the number of groups that give federal contributions, and the vast majority of these non-federal donors are small donors. In the 1998 election cycle, there were 2,777 federal PACs that made federal funds

contributions. In contrast, there were 11,383 entities (corporations, labor unions, tax exempt organizations, etc.) that donated non-federal money, not including individual donations. One obvious reason there have been more non-federal donors is that it is easier to make these donations because groups do not need to form a Political Action Committee. Most groups that made non-federal donations were small, local business organizations such as construction firms, hotels, funeral homes, towing services, dental offices, hardware stores, landscape services, legal offices, accounting firms, and retail food outlets. The donations of these groups that give non-federal money only are rather small: the median is just $375 (Apollonio and La Raja 2002). While the intended target of the BCRA is the large, wealthy organizations, the new law also prevents smaller entities from **[*45]** participating at the federal level through contributions that could hardly be called "corrupting."

(h) As interest groups increase their spending in elections, political campaigns may lose thematic coherence. Political parties broadcast "cookie cutter" issue ads that employ selected themes that the parties want to associate with their candidates. If interest groups dominate the airwaves, we are likely to see a set of interests advertised before campaigns that reflect the concerns of a relatively small segment of the citizenry who feel intensely about a particular issue. Professor Jamieson's research team at the Annenberg Public Policy Center (APPC) shows that interest groups already account for two-thirds of the more than $500 million spent on issue ads during the 2000 election cycle. In the APPC report, Professor Jamieson wrote, "Over the last three election cycles, the number of groups sponsoring ads has exploded, and consumers often don't know who these groups are, who funds them, and whom they represent" (see APPC, p.1).

(i) Interest group ads lack the accountability that is present when a party sponsors ads. An

important difference between advertising by outside groups and political parties is that the former are not linked at the ballot box with the candidate. Therefore, outside groups can air ads without facing reprisals from voters, an arrangement that undermines accountability in the campaign process. Professor Magleby, for instance, cites numerous groups in his study with indistinct names such as Foundation for Responsible Government, American Family Voices, [*46] Coalition to Make Our Voices Heard, and Committee for Good Common Sense (see Magleby 2002). More of these groups may emerge if non-federal funds are channeled away from the parties and toward interest groups.

(j) When parties broadcast political ads their candidates are perceived as responsible for these ads, even when these ads are not express advocacy. Evidence for this perception comes from the willingness of candidates to restrain the activities of their parties. In at least two important Senate contests the candidates publicly declared they would request the political parties not to spend non-federal funds in their races. In the Wisconsin 1998 Senate contest, Senator Feingold requested that the Democratic Party refrain from running issue ads in Wisconsin. The party complied even though it risked losing a very important seat. In the 2000 New York Senate contest both candidates agreed not to use party non-federal funds. The candidates were careful to articulate that they could not be held responsible for the advertisements done by outside groups. For example, candidate Clinton declared: "if we make an agreement to do away with soft money, I assume it will include everything. Now obviously there are groups that we have no direct control over that we will have to ask to abide by whatever agreement you reach…" (NY Times, Sept 21, 2000). Candidates can credibly deny their association with interest groups, even if these interest groups have had close relationships with the candidate in the past.

(k) The political parties keep each other accountable with their issue ads because they can easily identify the opposing party ads and link them to the party candidate. In his report on non-federal funds and issue advocacy in the 2000 elections, Professor Maglebly provides some examples of how this works:

> "The Republicans successfully challenged DCCC ads in Kentucky Six and New Jersey Twelve. The ads were pulled from the air, and the Republican candidates achieved public relations victories against not only the DCCC but also the Democratic candidates. A spokesperson for the Kentucky Sixth Congressional District candidate Scotty Baesler stated that having the ad pulled 'hurt us in a significant way. It allowed Fletcher to raise a credibility issue.' Interestingly, as the race progressed, the Democratic campaigns were more careful and it was the Republicans who had more controversial ads pulled. Both parties tried to make the opposing candidates take the heat for soft-money ads that went too far."

The example used by Professor Magleby demonstrates that parties and their candidates are jointly punished for becoming too controversial. The traditional head-to-head competition between the party candidates provides the natural mechanism for holding the party organizations accountable.

25. If party organizations lose their central role as coordinators of electoral activity, interest groups and individual candidates will pursue their campaign goals more independently. Instead of choosing the party as an arena to

build and coordinate **[*48]** campaign themes, interest groups, with narrower interests, will increasingly take up the functions that parties leave off. Already, groups like EMILY's List behave increasingly like political parties by using non-federal funds to identify and train candidates for office and to mobilize voters. See Affidavit of Joe Solmonese, Chief of Staff of EMILY's List, ¶¶ 4, 25). In the 2000 elections the Democratic Congressional Campaign Committee gave EMILY's List $1.3 million in non-federal funds for help in mobilizing voters. (Edsall, April 21, 2002) It is likely that EMILY's List will raise these funds on its own in upcoming elections, and deploy them to further its organizational goals.

(a) The last set of reforms in 1974 empowered Political Action Committees because parties were severely restricted (Sorauf 1992). The same consequences are likely with the BCRA. Membership PACs, such as EMILY's List, NARAL, NRA should have relatively greater influence in elections now that national committees will forego resources that are available to interest groups. Keeping track of the activities of outside organizations will be much more difficult than for parties. Professor Magebly's effort to assemble information about interest group activity in elections is notable for the very reason that it is so difficult to find out which groups engage in campaign activity. I was a part of a team in California that visited local broadcast stations, interviewed leaders of local interest groups and contacted candidates about political campaigns being waged against them.

[*49] (b) As much as the research team attempted to extend its network of "informers" who knew about campaign activity by outside groups, we had no way of ascertaining the full range of efforts by groups. For example, while officials from the California AFL-CIO would provide the cost of sending direct mail to members during the presidential primary, they would not provide figures about the cost of telephone banks. Nor would they cite figures about

administrative cost to support campaign activity. Regarding issue ads by outside groups, an organization called "Republicans for Clean Air" ran negative advertisements against John McCain. We could not determine the sponsors of this ad until reporters in Washington discovered that two brothers from Texas, who strongly supported George W. Bush, paid for these advertisements using a P.O. Box in Herndon, Virginia. When I tried to obtain figures from the local ABC affiliate about the cost of airtime they purchased, this office claimed they did not have to turn over these records. This direct personal experience trying to monitor outside electoral activity revealed to me the potential difficulties of identifying the source of interest group campaign activities, including issue ads. By reducing the amount of money that flows through political parties, the BCRA is likely to spark more outside activity that is difficult to track.

(c) Experience in the states illustrates how outside spending may increase if party funds are restricted. Professor Michael Malbin, Executive Director of the Campaign Finance Institute, co-authored a study of campaign **[*50]** finance in states with ambitious regulatory frameworks (see Malbin and Gais 1998). Malbin and Gais show that efforts to diminish the need for money in politics have not met with success. They point to Wisconsin as an example of a state that made a robust effort to reduce the role of money in politics by limiting contributions to and from the political parties. The result was the formation of "conduit" committees. Others have reported a rise in independent expenditures (see also, Ehrenhalt 2000). The most recent efforts to finance campaigns with "clean money" and reduce political spending in Maine have run aground because outside groups have augmented their spending to influence a few key seats that held the balance of power in the legislature (see *Associated Press*, March 21, 2002).

26. The ban on non-federal funds to national political parties encourages the formation and strengthening of shadow party organizations. Wisconsin's experience with tight restrictions on political parties saw the rise of "conduit" committees to channel money to candidates in competitive races because the parties could no longer perform this function (see Malbin and Gais).

(a) The reduction of party influence will spur factional groups within the parties to pursue their own brand of campaigning. For example, the New Democratic Network, which reflects the centrist wing of the Democratic Party, will compete more intensively for funds and political influence against the Progressive Donor Network, which reflects the liberal wing (see Foer, 2002). These two factions should attract the funds that formerly **[*51]** went to the Democratic national committees. They will invest their resources to support candidates who espouse their particular visions of the Democratic Party. Thus, by weakening the national committees relative to quasi-party groups, the BCRA reduces the parties' capacity to build coalitions during the electoral process and moderate the potential divisiveness of factional group politics.

(b) While the reformers hope that the enactment of the BCRA will diminish the importance of money in politics, research demonstrates that campaign finance laws have limited impact on the amount of money in elections. In a study of U.S. campaign spending between 1978-98, Ansolabehere, Gerber and Snyder (2001) conclude that growth in spending is associated with rises in the Gross Domestic Product (GDP). The authors provide two possible explanations. First, as GDP grows so does the size of government, which means more groups will seek to influence government activity. The second explanation is that, as personal income rises, giving rises (see Verba, Schlozman, and Brady 1995). Political spending, in this scenario, appears to rise like consumer spending for other goods and services

when the economy expands. Notably, even in Great Britain, where the government imposes strict spending limits on candidates and television advertising, the amount of political spending corresponds to changes in the GDP. The researchers conclude that "regulation of spending through limits and TV restrictions may be elusive (see Lubenow, p. 43)."

[*52] 27. The BCRA will make it tougher for political parties to work together on fundraising and reduce the level of interaction among levels of party committees. The ban on joint fundraising for Levin Amendment funds prevents state and local parties from working together to raise money for party-building activities.

(a) The BCRA prohibits party members at the national level from helping state and local parties raise nonfederal money. This prohibition will have negative consequences for state parties, particularly the parties in the small states. According to Beverly Shea, Finance Director of the RNC, whom I interviewed on September 6, 2002, "fundraising in the states is the toughest job of all." She says most party donors are not familiar with the work of state parties. While state parties appear to be doing a better job of fundraising in recent elections, Shea states that the leaders of many state party organizations are not well-positioned to raise money.

(b) State staff turnover is particularly high because state organizations cannot afford to pay salaries commensurate with that of the national organizations and consulting firms. The consequence is that fundraising can sometimes be a haphazard process. State organizations have not always invested in long-term strategies to develop donor networks, nor have they established professional routines for fundraising. According to Beverly Shea, who also has experience at the state level, the selection of party chairs "appears to drive a wedge between partisan factions within a state to a degree that it does not at the national level, leaving

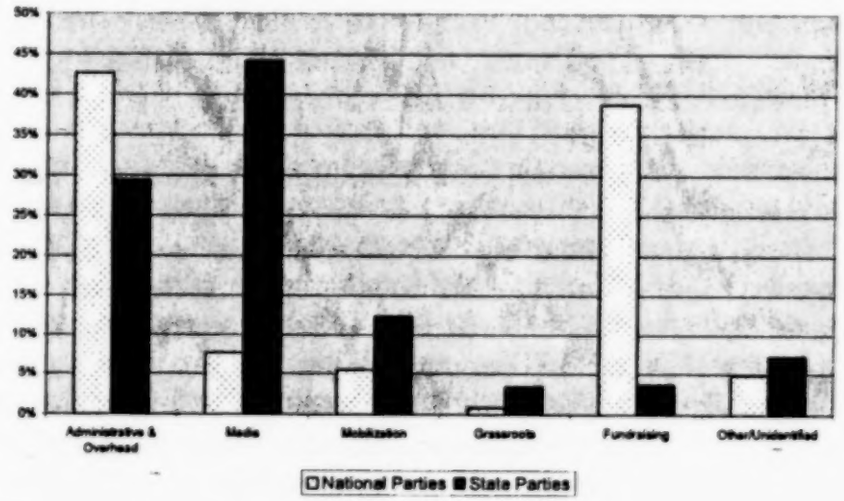
some prospective donors refusing to give to the state party." Fundraising at the national level draws from a **[*53]** larger and more diverse pool of donors, and the selection of the party chair appears less relevant to prospective donors.

(c) For these reasons, the RNC plays an important supportive role for state party fundraising by providing ongoing advice, continuity, technical assistance and transfers of nonfederal money. Now that national committees may no longer raise and transfer nonfederal money, state parties must invest additional resources in fundraising operations. Raising money costs money.

(d) State organizations will not make up this loss of party building money through their own fundraising in the near future. Based on the amount that state organizations currently invest in fundraising tasks, it seems unlikely. National committees spent about 40% of their nonfederal funds to raise approximately $500 million nonfederal dollars. In rough terms, about $300 million of national committee nonfederal funds were transferred to state organizations. For state committees to keep pace in the 2004 cycle, without national committee transfers, they may need to spend an additional $120 million on fundraising operations collectively (40% of $300 million = $120 million). According to reports from the Center for Public Integrity and the Federal Election Commission, state parties spend only 4% of their party building budget on fundraising (see Figure 17 below), which is less than $20 million dollars ($12.1 million in the allocation account and $5.4 million in the nonfederal account). This estimate suggests that state parties would need to invest almost six times**[*5 4]** as much in fundraising operations to bring them to the same level of resources that they received through national committee transfers. Instead of spending only $20 million, state parties would need to spend $140 million to get the same financial returns -- assuming it were even possible for them to raise that much money.

(e) The parties have evolved a division of labor and it would be difficult for the state parties to simply fill the vacuum of fundraising left by the national parties. This division appears efficient: resources are accumulated centrally and then allocated locally where party operatives know the political terrain.

Figure 17. Division of Labor: Spending Percentages by Level of Party, 2000 Elections



(f) The BCRA also hampers state party fundraising by severely limiting federal candidates' ability to help the party raise nonfederal funds. **[*55]** Federal candidates have been a key source of help to state organizations, particularly in the smaller states. U.S. Senators sign fundraising letters for the state party or make phone calls to help fill the tables at the Jefferson-Jackson dinners (for Democrats) or Lincoln Day dinners (for Republicans). As I understand it, these candidates may only be featured guest speakers at such functions.

28. The BCRA will reduce support for challengers from political parties. Research demonstrates consistently that parties tend to support challengers in contrast to other kinds of

political actors that support incumbents. Parties do not contribute to challengers for sympathetic or altruistic reasons to help the underdog or encourage democratic competition. Rather, parties invest in challengers because they want to win elections and control government. The "by product" of their incentive to win is that challengers in potentially winnable races (meaning districts where partisan voters are distributed fairly evenly) receive party funds. In a 17-state study of campaign finance in state legislative elections during 1991-1992 (see Gierzynski and Breaux 1998), researchers found that parties gave as much of their funds to non-incumbents as to incumbents, even though the pool of incumbents is much larger. The Democrats and Republican parties each contributed about half of their funds to non-incumbents.

(a) Party contributions to challengers help provide an important threshold of financial support so they compete more effectively with incumbents. Although incumbents may raise more dollars than challengers, an additional dollar spent by challengers has a greater marginal impact on **[*56]** vote share than for incumbents. Professor Gary Jacobson of UC San Diego, who has done similar research for congressional races, explains that "incumbents are already familiar to voters at the outset of the campaign, whereas nonincumbents probably are not....Nonincumbents normally have much more to gain in the way of voter awareness during the campaign, implying that the more extensive – and therefore expensive – the campaign, the better known they will become" (Jacobson 1978).

(b) Campaign finance laws that curtail party finances adversely affect the amount of money that challengers raise. In research I conducted with Thad Kousser, Assistant Professor at UC San Diego, we collected campaign finance data from 15 states during the 1996 elections through the National Institute on Money in State Politics. We then observed the pattern of candidate fundraising, finding that political parties were the most generous to candidates in

potentially winnable races (those where prior elections were won or lost by 10 points or less), regardless of whether they were incumbents or challengers. Challengers fared slightly better with parties, providing an additional $66 per 1000 residents, but the more important point is that the parties did not favor incumbents. In contrast, PACs, interest groups and individual donors favor incumbents, providing an additional $295 per 1000 residents, a pattern that explains why these candidates possess fundraising advantages in elections. These findings confirm earlier studies of party and PAC contribution patterns.

[*57] (c) Campaign finance laws that restrict political parties may hurt the success of challengers in elections, precisely because parties are important sources of campaign contributions for challengers. Kousser and I examined whether variations in state laws affecting fundraising and contributions by parties altered patterns of fundraising among candidates. We found that state laws that restricted party financing adversely affected challengers. For example, a candidate running in a fairly competitive seat where past margins of victory averaged ten percentage points could expect to lose almost $500 per thousand residents when laws limit how much a party may contribute to a candidate.

(d) This loss of party money can affect how the candidate does on Election Day. A challenger who raises $500 more per thousand residents than the average challenger will capture an additional 1.8% of the vote. In contrast, an incumbent who raises $500 more than the average incumbent gains an estimated .7% of the vote (Kousser and La Raja 2002). These figures may not seem large but incumbents start out with more money than challengers. Additional funds that challengers receive from the party puts them on more equal footing with incumbents. The more money that a challenger raises above the average amount for challengers, the better she fares, even if the incumbent exceeds the average for incumbents by the same amount.

(e) Parties that are restricted from making contributions to candidates will try to help their candidates through generic party activities that include voter [*58] mobilization, issue ads and other party-based services. In other words, they should intensify party-building activities to attenuate the difficulties challengers face in elections. The BCRA, which eliminates non-federal funds at the national level and reduces party-building activity, will further hamper the ability of parties to help challengers through such broad-based party activities. Since the parties tend to concentrate mobilization efforts in winnable contests, it is likely that challengers will suffer the most.

V. Would less restrictive alternatives have been less harmful than a unilateral ban on non-federal funds for national committees?

29. There were many alternatives Congress could have adopted which would have been far less harmful to parties than the ban on national party non-federals funds, while addressing the major concerns of those who supported the BCRA. For example, a cap on non-federal donations would have done less harm to the political parties than a unilateral ban. The typical non-federal donation is actually quite low. In a study I did after the 1998 election cycle for the Institute of Governmental Studies and the Citizens' Research Foundation, I found that there were 24,546 non-federal funds donations to the political parties from individuals and entities. The average donation was only $8,750, and this does not include the many donors who gave in increments less than $200. More than 90% donated less than $25,000. The sum of donations under $25,000 amounted to almost 40% of party non-federal funds. The vast majority of donations come in under $100,000. The sum of donations under $100,000 amounted to just below 80% of party non-federal funds. Based on these numbers, it appears that a cap on non-federal donations at $100,000 would have addressed any perceived problems with [*59] mega-donors, without severely limiting

party resources. Parties would have retained a good portion of nonfederal funds from donors under the $100,000 level, while the mega-donors that give more than this amount would have been eliminated. The BCRA, with its unilateral ban on non-federal funds to the national parties, uses a meat cleaver approach, which makes no distinction between small and large donors, and forces the party to lose an important source of funds for party building activity.

30. Another less restrictive alternative Congress could have adopted was to restrict issue ads paid for with non-federal funds. The focus of reformers has been to eliminate the issue ads that they believe have generated a huge demand for non-federal funds. Why could Congress not have simply restricted issue ads paid for with non-federal funds or imposed a blackout period as the law does for interest groups? I am not an expert on constitutional law so in noting this possibility, I am assuming here that there would be no serious constitutional problems with preventing the parties from spending non-federal funds on issue ads.

(a) A ban on non-federal funds for national political parties may weaken the incentive for parties to invest in long-term party building. With fewer resources, the national committees will be compelled to lay off staff that was assigned to help state parties. State parties benefit from the advice and technical support of the national committee staff when they fundraise, recruit and train candidates and develop voter programs. According to RNC Finance Director, Beverly Shea, the RNC staff frequently analyze fundraising operations and offer advice when state leaders ask for [*60] consultations. The national party has absorbed the cost of hiring experts to monitor and advise state level committees. These personnel have been paid for, in part, through nonfederal money.

(b) National committees will save precious federal funds for political contributions and independent

spending rather than invest it in building up the state organizations. Drafters of the BCRA have assumed that the parties would simply shift their federal funds resources into voter mobilization and forego broadcast advertising. The national parties, however, may choose to use their hard dollars for independent expenditures and coordinated expenditures rather than invest more money in party-based mobilization campaigns in the states. Party operatives in Washington who are concerned chiefly about candidates at the top of the ticket may prefer to use federal funds on television ads, leaving the mobilization campaigns to outside groups. It would be risky for them not to save federal funds for broadcasting ads at the close of the campaign, especially when interest groups are increasingly active in campaigns. By cutting off non-federal funds to the national parties, the party's joint mobilization campaigns are jeopardized, particularly in states that lack the resources and expertise to mount these efforts on their own.

31. Provisions in the BCRA presuppose that state and local committees will be able to raise funds independently to compensate for the non-federal funds that will no longer come from national committee transfers. The national committees have been an important source of revenue for the state parties for both non-federal and **[*61]** federal funds. The Democratic committees at the national level transferred almost $170 million in non-federal funds to the state organizations for the 2000 elections, which comprised 63% of state party nonfederal receipts (when the figures are adjusted for swaps of federal and nonfederal funds between committees). In aggregate, the Republican state organizations were somewhat less reliant overall on their national committees for nonfederal money, receiving 53% of their non-federal funds through national committee transfers.

(a) I am skeptical of the claim by some advocates of the BCRA that parties will move additional resources into voter mobilization and grassroots programs now that they cannot use nonfederal money for issue ads.

This claim depends on whether state and local organizations can conduct comprehensive GOTV programs under the new federal requirement that parties use federal funds or a mix of federal funds and Levin Amendment money. Contrary to the intent of the drafters of the BCRA, federal law may actually reduce the amount of resources dedicated to voter mobilization, by taking the central coordinating organizations out of the picture – the national committees – and imposing greater administrative burdens on the local committees. The requirement that local committees raise and spend all their GOTV funds independently and file with the FEC once they surpass a relatively low threshold of federal funds spending is particularly onerous for committees that are run almost entirely by volunteers. In 2000, only 158 local party committees filed reports with the FEC from the many hundreds of active local organizations nationwide. It **[*62]** is not inconceivable that local committees will give up GOTV activity because the administrative burdens are too heavy.

(b) State and local organizations that rely primarily on large donors may find it difficult to meet the requirements of the BCRA and run GOTV and voter registration programs. According to the new federal law, state parties must pay for GOTV with federal funds or a mix of federal funds and Levin Amendment money, if there is a federal candidate on the ballot, which is a likely occurrence. That means that state organizations may not use money regulated under state laws that exceeds the source and limit restrictions of the BCRA. There are 30 states that allow unlimited contributions from one or more sources (such as individuals, PACs, unions, corporations); 11 states allow unlimited contributions from any source. As far as I know, there are no empirical studies to assess the reliance of state organizations on contributions that exceed the federal constraints. State organizations also invest more than $14 million in GOTV for state and local races, in addition to the $24 million that state parties spend on GOTV for all candidates, including federal, that is reported to the Federal

Election Commission. The fact that state organizations spend so much on GOTV should encourage careful scrutiny of the BCRA provisions regulating this important activity.

(c) In short, I think two basic adjustments – a cap on national party non-federal funds and restrictions on paying for issue ads with non-federal funds – would have addressed the chief concerns of reformers, without **[*63]** causing undue harm to the political parties. The BCRA's outright ban on national party non-federal funds will, however, significantly and unnecessarily weaken political parties at all levels.

I hereby declare under penalty of perjury that the foregoing is true and correct.

s/
Raymond J. La Raja

Executed on September 23, 2002

[LIST OF REFERENCES & EXHIBITS OMITTED]

* * *

Appendix A. The Effect of an Additional Non-federal Dollar Transfer between 1994 and 1998 Elections on State Party Activity

	State Party Spending in Allocation Accounts					
	Media	S.E.	Mobil & Grassroots	S.E.	Admin	S.E.
Republicans						
Change in National Party Transfers of Nonfed Funds 1994-98(per 1000 voting age persons)	0.84	0.04	0.09	0.02	0.23	0.04
Change in State Party In-House Nonfederal Funds 1994-98(per 1000 voting age persons)	0.49	0.06	0.17	0.02	0.30	0.05
Change in Close Senate Race, 1994-1998	11.29	29.96	16.84	10.84	-26.28	25.90
Change in Close Gubernatorial Race, 1994-1998	-7.25	36.26	-10.47	13.13	-12.96	31.49
Change in the % of Close U.S. House Races, 1994-1998	12.14	63.70	-7.81	23.06	-7.85	55.29
Constant	-81.33		8.10		73.22	
Number of Observations	50		50		50	
R-squared	0.85		0.66		0.59	
Democrats						
Change in National Party Transfers of Nonfed Funds 1994-98(per 1000 voting age persons)	0.75	0.17	0.22	0.06	0.00	0.18
Change in State Party In-House Nonfederal Funds 1994-98(per 1000 voting age persons)	0.10	0.08	0.15	0.02	0.69	0.08
Change in Close Senate Race, 1994-1998	38.67	49.15	-1.73	18.23	-17.64	51.31
Change in Close Gubernatorial Race, 1994-1998	9.92	52.49	2.73	17.33	-5.32	54.79
Change in the % of Close U.S. House Races, 1994-1998	87.14	93.14	7.75	30.75	-99.80	97.23
Constant	-40.25		-13.15		47.48	
Number of Observations	50		50		50	
R-squared	0.58		0.82		0.84	

OLS estimates. Dependent Variables (media, mobilization & grassroots, administrative spending) measured in change in dollars between 1994 and 1998 per 1000 voting age persons
Data Sources: Federal Election Commission; *National Journal* for election results.
Media includes communication for TV, cable, radio, newspaper
Mobilization and grassroots includes direct mail, phonebanks, canvassing, voter identification and regis. rallies, fairs, volunteer precinct walks/ distribution of banners and lawn signs, bumper stickers.
Administration includes office related expenses: rent, salaries, benefits, computers, travel, utilities
Change in National Party Transfers = 1998 - 1994 nonfederal tranfers from 3 national committees
Change in State Party In-House = 1998 -1994 nonfederal funds raised independently by state party
Close Senate or Gubernatorial Race is when final vote margin is 10 perc. points or fewer
% of Close House Races reflect % of races when final vote margin is 10 perc. point or fewer

REBUTTAL DECLARATION OF RAYMOND LA RAJA

1. I submit this declaration to rebut the following claims put forth by one or more of defendants' political scientist experts:

- That state parties are mere conduits for national committees;
- That parties will thrive under the BCRA; and
- That the BCRA will have minimal adverse effects on the relationship among parties at the national, state and local levels.

2. I reject the claim that state parties are mere conduits for national committees. Several of defendants' experts make this argument, calling the state parties "virtual appendages" (Krasno and Sorauf, p. 11); "conduits" (Green, p. 5), and "surrogates" (Mann, p. 31). These assertions give the impression that state parties are not robust organizations capable of developing and executing campaign strategies and performing other party work. As I explained in my affirmative declaration in this case, my data about party spending and activities show that state organizations are doing far more than airing issue ads during the election campaign season. See La Raja Declaration at ¶¶ 22-23. During the 2000 election cycle, some 30% of state party non-federal [*2] disbursements from their "allocation" accounts were spent on administrative overhead. Approximately 15% was spent on voter mobilization and grass roots activity. See La Raja Declaration, Figure 13, at p. 35. I take exception to the assessment by Krasno and Sorauf that the state parties spend small sums on party-building. Their combined spending in the 2000 election cycle on mobilizing voters, distributing grassroots materials, and paying the administrative expenses of the party organization amounts to more than that spent on

issue ads. It is worth emphasizing that administrative expenses, which include everything from salaries to office supplies and computer equipment, are critical to building and maintaining party infrastructure. While defendants' experts single-mindedly focus on media, they overlook the substantial role played by transfers of non-federal funds from the national parties in subsidizing state parties' core spending on administrative overhead.

3. Green contradicts Krasno and Sorauf's claim that party spending on non-media activities is small potatoes. Green writes: "Voter mobilization activities are an integral part of electoral campaigns; national parties spend millions on voter mobilization" (Green, p. 18). What Green does not acknowledge is that state parties rely considerably on national organizations to fund their voter mobilization campaigns through transfers of non-federal funds -- transfers that will be banned under the BCRA. Fully 62% of state party disbursements for grass roots and voter mobilization activities are paid for with non-federal funds. My data show that during the 2000 cycle, spending on grass roots and voter mobilization more than doubled since the prior presidential election. Loss of all non-federal transfers from national parties is likely substantially to reduce state party spending on grass roots activity and mobilization.

[*3] 4. Magleby concedes that party spending for mobilization has indeed had profound effects. Magleby refers to non-media efforts, such as direct mail, telephone, Internet and person-to-person contacts as the "ground war." His observation that ground war efforts successfully mobilized voters (p.24) undermines Green' assertion that I overestimate money spent on mobilization since I also include direct mail and phone calls, which he says "are aimed at persuading voters" (Green , note 17 on p. 14).

5. My observation that state parties in fact perform diverse activities is supported by other scholars, including Morehouse, who is cited in the expert report of Mann, and Holt (2000), who wrote the chapter on political parties in Magleby's edited book, *Outside Money*. Morehouse, one of the nation's leading academic experts on state parties, concludes that "[m]any state political party organizations are becoming stronger, not weaker." She observes that like other organizations in our modern, technological society, state parties are making use of professionals to communicate with adherents and to mobilize voters. Morehouse writes:

> "Parties have adapted themselves to the new technology and provide valuable serves to state and national candidates….Since the late 1970s the national parties have reinforced their state parties providing cash grants, professional staff, data processing and consulting services, expertise in fundraising campaigning, media and redistricting. State parties now are proficient in voter list development and get-out-the-vote efforts….In view of this evidence, it is clear that state parties are not decomposing, as the academics and journalists have been predicting, but have been adapting to the media-driven society in which they find themselves. They provide needed technical information and financial resources to candidates. They have maintained their

> autonomy as they became more professionalized and durable."[1]

6. The expert reports of defendants' political scientists present a view that party issue ads have swamped all other forms of activity. While my data shows that **[*4]** spending on issue ads has increased, they also demonstrate that investments in other party activities have increased as well. Parties pursue multiple strategies that include broadcasting of political messages and "on the ground" voter mobilization programs to attract potential supporters and energize loyal partisans. See also, Magleby Report, p.39, and Morehouse (2000). In suggesting that non-federal funds have done "little to nurture grassroots participation," Mann cites to a Brennan Center report that uses my data about voter mobilization in a way that underestimates the increases in party spending on voter mobilization (Mann at p.31). The Brennan Center claims to have taken my figures for 1992-1998 from my report with Pogoda (2001).[2] The Brennan Center appears to use a different methodology for the 2000 data, which makes comparisons to my data inaccurate. In particular, they do not include money spent for direct mail as I did. The Brennan Center results make it appear as though party spending on voter mobilization has not been going up substantially as the parties spend more soft money. This is an obvious result of narrowing the definition of what constitutes voter mobilization for the last cycle. Our figures differ by almost $20 million dollars.[3] There is also no explanation for why the Brennan Center figure for money spent on voter

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[1] See Morehouse, (www.cfinst.org/parties/papers/morehouse_stateparties.pdf).

[2] See http://www.brennancenter.org/presscenter/pressrelease_2001_070301.html

[3] See Figures 5 and 6 of the report "The Purposes and Beneficiaries of Party 'Soft Money'", July 3, 2001; go to http://www.brennancenter.org/resources/downloads/purposes_beneficiaries070301.pdf.

mobilization in 1996 is lower than what was listed in my report.

7. One conclusion on which political scientists agree wholeheartedly is that political parties at the national, state and local level have become more integrated over the past two decades. They work closely together in a variety of contexts. Where **[*5]** scholars seem to disagree is whether this is a good or bad outcome. Defendants' experts appear to take the position that party cohesion masks a malignant effort to get around federal campaign finance laws. Evidence of increasing party cohesion, they suggest, is justification for designing federal laws to separate the party components, even if these laws override state laws.

8. This line of reasoning, however, runs counter to what political scientists have long argued about the importance of party cohesion. Greater integration between the federal, state, and local levels of parties produces positive benefits, particularly in a federal system that disperses authority and responsibility. See, e.g., *Toward a More Responsible Party System* (1950).

9. Cohesive parties enhance electoral accountability by linking the campaigns and platforms of federal, state and local candidates. In this way, they provide voters with clear signals about what the party stands for collectively. The joint campaigns of political parties across federal, state and local candidates also generate electoral economies of scale that mobilize greater numbers of voters. The national parties have been the catalysts for party integration because they possess the resources to coordinate such activity. A ban on nonfederal money to national committees will surely weaken party cohesion by weakening the central coordinating organization.

10. Green, in fact, acknowledges that linking the races of federal with state candidates increases turnout. He

writes: "The appeals that state and local parties make to voters and funders frequently mention both federal and nonfederal candidates, particularly when presidential candidates or contested U.S. Senate seats are at stake. The reason behind this tactic is easy to discern. In addition to the economies achieved when **[*6]** multiple candidates are presented to voters, designers of campaign literature recognize that voters are often more interested in federal races than they are in state legislative races" (p.13). Professor Green articulates what party officials have known since the election campaign of Andrew Jackson, namely that the top of the ticket helps draw people to the polls. The BCRA discourages state and local parties from associating with their federal candidates, however. By Professor Green's own admission, party strategies that include federal candidates bring more voters to the polls. Weakening this link should hurt turnout.

11. Defendants' experts suggest that the "Levin amendment" will encourage state and local grassroots efforts. But allowing state and local parties to raise and spend "Levin funds" will hardly compensate for the loss of national and state committee transfers of federal and non-federal funds, which are now prohibited under the BCRA. The Levin amendment seems to have been enacted based on the misguided notion that state and local parties have the fundraising capacity to raise both federal funds and Levin funds necessary for GOTV and voter registration. The BCRA also assumes that local parties, which are run mostly by volunteers, will have the time and expertise to file reports with the Federal Election Commission. In fact, to avoid administrative hassles and the risk of running afoul of federal laws, I expect that many local parties will simply avoid engaging in any "federal election activity," as BCRA defines that term.

12. As part of the argument that state parties are merely conduits, several experts have made the argument

implicitly that nonfederal transfers have had no beneficial effects on either competition or voter turnout. Mann even suggests that non-federal funds have insulated incumbents and led to *less* competition since "the period in [*7] which the party soft money system exploded has coincided with a decline in competition in congressional elections" (p.31). Krasno and Sorauf make a similar argument (p.27). As scholars of congressional elections, they would acknowledge that this pattern is typical for U.S. House elections following the redistricting process at the start of the decade. Political competition declines over the decade because highly qualified non-incumbents exploit uncertainties early after redistricting to challenge incumbents who have not yet forged close links with their new constituents. The decade-long decline in political competition is not unique to the 1990s at all, and it is unfair to suggest that nonfederal money played a role in this customary intra-decade decline in competitiveness.

13. Given the unprecedented closeness of the partisan margins in both the House and Senate, it is all the more striking that the political parties spend *any* money on party-building, particularly in states where there was no competitive federal contest. The stakes in recent elections have been so high for winning the marginal seat that parties have a terrifically strong incentive to put all their chips in the handful of states where a contest might turn the balance. FEC reports show, however, that national committees transfer federal and nonfederal funds to all the state parties, regardless of whether there are competitive races in those states. They do so because the national parties have long-term objectives that transcend any particular election, including maintaining and building a strong and integrated party organization at the national, state, and local level. Many state parties are highly dependent on transferred national party funds, particularly in states that lack a substantial donor base.

14. Just as one cannot lay the blame for a decline in political competition during the 1990s at the feet of non-federal party money, it is equally unreasonable to argue that the party's use of these funds causes lower voter turnout. Defendants' expert witnesses have assumed that party campaign strategies have led to a downward trend in voter turnout. Recent research by McDonald and Popkin (see *American Political Science Review* 95(4): 963-974) demonstrates, however, that voter turnout is actually not going down. The share of the voting age population who are eligible to vote has been dropping because there is a growing proportion of noncitizens and felons. When these groups are removed from the voting age population, voter turnout (measured as a percentage of eligible voters) has been quite variable, but it has not trended downward since 1972. For arguments sake, even if voter turnout were declining, it might be that political parties' mobilization and grass roots activities run counter to societal trends that cause fewer citizens to vote. In other words, turnout might decline even further if parties did not invest in voter mobilization as much as they do.

15. I would also like to rebut the claim made by defendants' experts that parties will adapt easily and thrive under the BCRA. Adaptation is not the issue here. There is no doubt that parties will work hard to survive the harmful effects of the BCRA. The issue is whether parties will adapt in pathological ways and whether special interest groups will gain significant advantages over the parties.

16. Will the BCRA generate incentives for parties, or former party officials, to form quasi-party organizations, or to implement other non-transparent strategies to help candidates and spread the party message? Professor Green is correct to point out that *basic* incentives of parties will not change – they seek to mobilize support for their [*9] programs and candidates – but rules will affect how they pursue these goals (see Green, note 9, p. 8). Green writes that it would be easy for national party operatives to orchestrate campaign

activities outside the formal party apparatus, especially through state party organizations, unless the BCRA also limited the scope of state party activity (p.19). He believes that banning transfers from national committees to subnational organizations will prevent the former from "co-opting" the latter. First, I disagree that higher levels of party co-opt sub-levels since their interests and goals overlap considerably. Indeed, the RNC is governed by the state parties through its members, which include one committeeman, one committeewoman, and the state party chair from each state and the five territorial parties. And as Morehouse (2000) points out, state parties have considerable autonomy. Second, by preventing party transfers the BCRA increases transaction costs for parties to work together. Party personnel at different levels retain an incentive to work together, but they can no longer do so directly. Forcing every party unit to be self-sufficient prevents them from taking advantage of each other's strengths.

17. Defendants' experts assert that taking away nonfederal resources from national party organizations will make them stronger. This proposition defies logic. It is the "bloodletting" remedy for improving the health of parties. The argument runs as follows: parties invest "too much" money on issue ads, which whets their appetite for nonfederal funds; by banning nonfederal donations to national parties, they will be forced to expand their donor base to raise money in smaller increments and invest in more grassroots activities.

[*10] 18. As defendants' experts admit, the national parties have already made significant investments in raising federal funds. They simply assume that parties can further expand this federal donor base. In fact, the RNC's ability to raise additional federal funds is quite limited as Janice Knopp, RNC deputy director of finance/marketing director, makes clear in her witness statement (see Declaration of Janice L. Knopp at pp. 5-10). This also appears to be true of state

parties (see Declaration of Kathleen Bowler, Executive Director of the California Democratic Party, at pp. 28-29).

19. Defendants' experts appear to share a nostalgia for old-fashioned, non-professional party organizations. The days of torchlight party parades are over. Political parties are subject to same societal pressures as non-political organizations to modernize operations for maximum efficiency and effectiveness. The modern party relies more heavily on professional expertise and sophisticated technology rather than volunteers, although volunteers do still play an important role. In short, parties like other modern organizations have shifted from labor to capital intensive organizations.

20. There is a notable lack of context when defendants' experts argue that parties should be more grassroots-oriented. Green, for instance, cites research by Putnam (2000) about the decline in working for political parties (p. 31), but does not mention that participation in other traditional organizations has declined as well. Even civic organizations like the League of Women Voters rely more heavily on "checkbook" volunteerism than ever. Mann acknowledges the factors that changed the orientation of the parties, but he neglects to put them in the context of broader organizational shifts in society.

[*11] 21. The incentives that attract citizens to work for parties are varied. It was true historically, however, that the core party workers joined for material benefits, namely patronage. Today, the core party workers are campaign professionals who get paid for their expertise. My point is that it is unfair to hold party organizations to standards that have weak historical foundations. Krasno and Sorauf's historical reference to mass-based party organizations is slightly misleading in the sense that parties in the United States never really developed organizations that fully engaged dues-paying members in activities throughout the year, as in

Europe and elsewhere (see, for example, Epstein 1986; Beck and Hershey 2001; Altschuler and Blumin 2000). It is even more important to recognize that such standards of volunteer participation are not even achieved by contemporary civic organizations and interest groups.

22. Rather than enhancing prospects for strengthening the associational ties that bind different levels of party, the BCRA drives a wedge between them. The defendants' expert witnesses appear to ignore or deny that the national parties have played a role in strengthening the state party organizations and providing key resources and expertise to mobilize voters. Mann acknowledges that there have been some "spillover" effects that allow state and local parties to hire additional staff, update voter lists and expand activities. But he minimizes the importance of these broad-based party efforts simply because parties also engage in issue advertising.

23. Under the BCRA, the national parties have fewer incentives to support state and local party building efforts since they must use only federal funds. With more limited resources, the national parties will triage their work. Party operatives at the national level will be hesitant to spend precious federal resources on state party building **[*12]** when they know that federal candidates will face a barrage of ads run by outside groups. They will save federal funds for independent expenditure ads in order to counter attack ads sponsored by outside groups. Far from encouraging spending on grass roots activity, restricting non-federal funds will cause parties to husband their remaining federal funds to cover media costs.

24. The fundraising provisions of the BCRA are particularly onerous for state and local parties. State parties rely considerably on the national committees and federal officeholders to help them raise money. Supporters of the BCRA assume that state parties will simply raise nonfederal

funds that no longer go to the national committees. But state parties will need to invest considerably more in their fundraising operations to raise what they previously received through the national committee transfers. The efficient division of labor that had developed over the last two decades (national committees raise funds centrally and the state parties spend them) has minimized the amount of money that parties collectively must invest in fundraising. Now that state and local organizations are compelled to be self-reliant, they will have to devote greater resources to fundraising.

25. Preventing federal candidates from raising non-federal money also hurts the state and local parties, especially in states with weak donor bases. RNC finance director Beverly Shea says that many state organizations rely on federal officeholders to raise money. Green argues that the fundraising relationship between federal candidates and state party officials is unhealthy ("...state parties have no shortage of favors to ask federal officeholders on behalf of important donors; federal office-holders in turn have considerable incentives to accede to or anticipate these requests, particular since many of **[*13]** them aspire to higher office..." (p.12). I fail to see why federal laws should diminish the incentives for federal officeholders and state parties to work together, even in the domain of fundraising. On the contrary, the mutual dependency is healthy. When federal officeholders raise money at local party fundraisers, it encourages them to be more attentive to local interests at the expense of national constituencies represented by PACs in Washington.

26. A glaring problem with the defendants' expert reports is that they assess the effect of BCRA's regulations on the political parties without reference to the groups that are likely to gain the most relative to the political parties. These are the interest groups that may continue to use non-federal funds in ways that the parties are denied. Magleby points out that nothing in the BCRA prevents interest groups from

continuing to use nonfederal funds without limit for "ground mobilization" and for broadcasting political ads outside the 30 and 60-day blackout periods (p. 24). Krasno and Sorauf elaborate other ways for interest groups to spend non-federal funds post-BCRA that are not available to the parties (p.64). The blackout periods will simply lead interest groups to frontload their issue ads prior to the blackout periods. According to Mann, early issue advertising by the DNC in 1995 at the urging of Dick Morris helped frame the message for the presidential contest. There is no reason to believe interest groups will not pursue the same strategy. Of course, interest group advertising will be that much more dominant if the BCRA's restrictions on issue advertising during the 30 and 60-day periods are struck down. Moreover, interest groups will focus on "ground war" activities during the blackout period. According to RNC field operatives, interest groups are already **[*14]** increasing their non-media mobilization activities in the weeks immediately before elections. See Declaration of John Peschong at ¶ 18.

27. The increasing salience of interest group advertising may undermine electoral accountability and intensify negative advertising. As defendants' experts observe (see especially Magleby) interest groups have given themselves a variety of opaque names to conceal their true identities from the public. And contrary to data presented by Krasno and Sorauf for the 1998 elections (drawn from the Brennan Center's "Buying Time 1998" study), it appears that in 2000, interest group ads were more likely to be attack ads than party or candidate ads. There is no explanation for why Krasno and Sorauf did not use the most recent data from the Brennan Center's "Buying Time 2000" study. (The Buying Time 2000 data that they have left out of their report appears in Figure 11 on page 31 of my affirmative declaration in this case.) This oversight is perplexing since Krasno, as an author of the "Buying Time 1998" study, surely is familiar with the Buying Time 2000 study.

28. Defendants' experts present the BCRA as an effort to prevent the use of non-federal funds by donors to influence the policy process. They repeatedly claim that 800 donors accounted for the bulk of non-federal donations to the political parties in 2000. I have not been able to locate a published scholarly source for this figure or any description of the methodology used to construct this figure. Absent substantiation, this figure is highly dubious and should not be relied upon. I would note that advocacy groups favoring campaign finance reform have been known to aggregate such figures in a subjective manner.

[*15] 29. While defendants' experts portray the BCRA as reducing the "appearance of corruption," they notably have little to say about the BCRA's inevitable channeling of non-federal funds toward interest groups that are far more likely than parties to pursue narrow, access-based legislative strategies. These same interest groups are far less transparent than parties. It is difficult to discern how forcing non-federal money "underground" in this way, and directing it toward organizations with much narrower legislative agendas, in any way helps to insulate the political process from the "appearance of corruption."

I declare under penalty of perjury that the foregoing is true and correct.

s/
Raymond La Raja

Executed on October 7, 2002

Expert Affidavit of
John Lott, Jr.

* * *

[9 (11 PCS/ NRA 116)]
Besides regulations on what a donor can give a candidate, there are also limitations on soft money contributions to parties. Parties have in the past served as conduits for money to candidates. The new regulations should hurt challengers since it reduces the ability of the party to use its reputation and serve as intermediary between the candidates and potential donors, an aspect that is particularly important for challengers.

Table 1 provides some information on how important party contributions have been to challengers. For the U.S. House and Senate from 1984 to 2000, the percent of contributions for challengers that come from political parties averages between 7 and 13 percent when broken down by federal House and Senate and by party. A couple of facts stand out. While both incumbents and challengers received help from their parties, on average challengers are between 77 and 307 percent more dependent upon party help than incumbents. Indeed, for all these types of races over these nine elections, there is only one case (Democratic Senate races in 2000) where incumbents received more help from their party than did challengers. Republicans (both incumbents and challengers) get a greater percentage of their funds from their party than do their Democratic counterparts. Republican Senate challengers depend upon party funding much more than their Democratic counterparts, facing the biggest absolute gap -4 percentage points.

* * *

[Table 1 (11 PCS/ NRA 117)]

Table 1: The Relative Importance of Party Assistance to Incumbents and Challengers by Party

Years	% of money spent on Incum-bents which came from Party (1)	% of money spent on Chal-lengers which came from Party (2)	Ratio of Cols. (2) (1)		% of money spent on Incum-bents which came from Party (1)	% of money spent on Chal-lengers which came from Party (2)	Ratio of Cols. (2) (1)
House Democrats					House Republicans		
2000	1	2	2		1	5	5
1998	2	4	2		2	8	4
1996	2	6	3		2	9	4.5
1994	3	11	3.67		2	10	5
1992	2	10	5		3	10	3.33
1990	1	9	9		2	7	3.5
1988	2	7	3.5		3	13	4.33
1986	1	6	6		2	10	2.5
1984	4	10	2.5		4	17	2.83
Avg.	2	7.2	4.1		6	9.9	3.9
Senate Democrats					Senate Republicans		
2000	6	1	0.16		5	8	1.6
1998	7	10	1.4		6	8	1.3
1996	4	8	2		9	10	1.1
1994	8	13	1.63		6	5	0.8
1992	6	14	2.33		13	20	1.5
1990	5	9	1.8		7	12	1.7
1988	4	11	2.75		8	18	2.3

1986	7	9	1.3		8	18	2.3
1984	3	9	3		6	20	3.3
Avg.	5.6	9.3	1.8		7.6	13.2	1.8

Source: http://www.cfinst.org/studies/vital/3-8.htm

Report Concerning Interest Group Electioneering Advocacy and Party Soft Money Activity

By

David B. Magleby

September 23, 2002

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[5] Report Concerning Interest Group Election Advocacy and Party Soft Money Activity

By: David B. Magleby

I. Executive Summary

This report summarizes the ways political parties, individuals and interest groups spend money opposing or supporting individual candidates in federal elections that fall outside regulation by the Federal Election Campaign Act (FECA). The two primary modes of circumventing the FECA are through party soft money and interest group election advocacy including electioneering communications as defined by the Bipartisan Campaign Reform Act (BCRA).

During the past two election cycles, I have supervised teams of academics who systematically monitored campaigns in many of the most competitive federal races as a part of my work with the Center for the Study of Elections and Democracy ("CSED"). The CSED teams focused on the often unregulated and unreported election advocacy and spending that have become known as "soft money" or "electioneering advocacy." As part of these studies, the academics collected data from radio and television stations, interviewed party and interest group leaders in Washington, D.C. and locally, established reconnaissance networks to collect political mail and tracked telephone and personal contacts by the campaigns and groups in the key districts. This work resulted in case studies for each district and several extensive studies that are cited throughout this report.

In addition to the case studies of these races, this report relies on the results of surveys I conducted to assess the perceived purpose of communications that are covered by FECA and those that are not. In 2000, I used focus groups conducted by Wirthlin Worldwide and a national Web-TV survey conducted by Knowledge Networks to ask random samples of voters in 2000 to assess the purpose of these communications, which include unregulated electioneering advocacy and party soft money advertising.

The major findings of my research show that:

Electioneering advocacy

- Interest groups - including corporations and unions - are increasingly sponsoring broadcast advertisements and other advocacy that communicate a message for or against a particular candidate but that fall outside FECA's regulatory scheme.
- These unregulated electioneering advertisements fall outside FECA's regulatory scheme primarily because they avoid the use of the "magic words" of express advocacy such as "vote for" or "vote against."
- The "magic words" defined in *Buckley v. Valeo* do not provide an effective way to determine whether advertisements have the purpose and/or effect of supporting or opposing particular candidates.
- **[6]** Groups and individuals often avoid using the "magic words" precisely so they can avoid FECA's disclosure requirements and bans on the use of corporate and union treasury funds for electioneering purposes.
- A number of indicia make clear that the ads run by individuals and interest groups are in

reality electioneering ads that are meant to influence, and do influence, elections: These electioneering ads generally name a candidate, run close in time to the election, target the named candidate's district, are run primarily in competitive races, and generally track the themes in the featured candidate's campaign.

- Voters perceive little difference between the purpose of ads run by the candidates themselves and ads run by individuals and interest groups that name a candidate. They overwhelmingly saw both sets of ads as aimed at influencing their vote. In contrast, voters view interest group advertisements that did not name a candidate as aimed at persuading them on a policy or legislative issue.

Party Soft Money

- In recent years, the major political parties have raised more and more soft money in larger and larger amounts, and from sources (such as corporations and unions) that are prohibited from making hard money contributions.
- This soft money is increasingly used to promote or attack specific candidates while parties have also reduced their coordinated expenditures and hard money contributions to candidates.
- The parties focus their soft money spending - often millions of dollars - on the competitive races.
- In competitive elections, the political parties use soft money to mount campaigns that parallel the candidate's, relying on their own

pollsters, media and mail consultants, and sponsoring their own candidate-centered, electioneering advertisements.

These unregulated electioneering communications and large soft money contributions and expenditures amount to a substantial erosion of FECA's core principles of disclosure, source prohibitions, and contribution limits for funds used to influence the election or defeat of candidates.

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[10] 2. Unlimited and undisclosed electioneering by groups and individuals The U.S. Supreme Court, when considering the constitutionality of the FECA in Buckley v Valeo drew a distinction between election related activity and other forms of political communication. The Court defined express advocacy communications as those that used words like "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," "reject."[25] These "magic words" of electioneering have become the standard to determine whether or not a communication falls under the disclosure, source limitations, and other provisions of the FECA.

By the early 1990s and especially by 1996, interest groups had developed a strategy to effectively communicate an electioneering message for or against a particular candidate without using the magic words and thus avoid disclosure requirements, contribution limits and source limits.[26] This

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[6] *Buckley v. Valeo*, 424 U.S. 1, 44 n.52 (1976).

[7] The 1996 initiative by labor into unregulated and unlimited electioneering communications was substantial. The AFL-CIO spent a reported $35 million dollars (see Deborah Beck, Paul Taylor, Jeffrey Stanger, and Douglas Rivlin, "Issue Advocacy Advertising During the 1996 Campaign: A Catalog," report series by the Annenberg Public Policy Center, no. 16, 16 September 1997, 10), much-of it on television, aimed at defeating 105 members of Congress, including 32 heavily targeted Republican freshmen. See Paul Herrnson, Congressional Elections: Campaigning at Home and in Washington, (Washington, D.C.: Congressional

form of campaigning has important advantages. It allows corporations and unions to spend treasury funds on electioneering communications--wither directly or by contributing to groups that will actually sponsor the advocacy. It allows groups to avoid disclosing the identity of those individuals or organizations that are actually paying for the communications. Groups can take this a step further and mask their identity behind an innocuous name. For example, the pharmaceutical industry masked its identity by running ads in 2000 under the name "Citizens for Better Medicare" and some labor unions masked their identities behind "American

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Quarterly, 1998), 123. Labor broadcast television commercials in forty districts, distributed over 11.5 million voter guides in twenty-four districts and ran radio ads in many others. See "Labor Targets," *Congressional Quarterly Weekly Report*, 26 October 1996, 3084; Jeanne I. Dugan, "Washington Ain't Seen Nothin' Yet," *Business Week Report*, 13 May 1996, 3. The labor campaign triggered a complaint to Federal Election Commission by the National Republican Congressional Committee, which charged that when the AFL-CIO's ads are "heard, read, and seen" as a whole "a reasonable person can only view them as advocating the defeat of a clearly identified candidate in the 1996 Congressional election." *See In the Matter of AFL-CIO Project '95* (complaint filed with the Federal Election Commission Feb. 13, 1996) (Attached Appendix G).

The business community responded to this major effort by labor with their own unlimited and undisclosed communications, again avoiding any of the magic words. Partners in the business response were the National Federation of Independent Business (NFIB), U.S. Chamber of Commerce, the National Association of Wholesaler-Distributors, the National Restaurant Association and the National Association of Manufacturers. Their group, called the "Coalition-Americans Working for Real Change," was active in thirty-seven House races, spent an estimated $5 million on over thirteen thousand television and radio commercials, and mailed over two million letters mainly in support of Republicans, to owners of small business. See Paul Hermson, "Parties and Interest Groups in Postreform Congressional Elections," in *Interest Group Politics*, 5th ed., ed. Allan Cigler and Burdett A. Loomis (Washington, D.C.: Congressional Quarterly, 1998), 160-61. Others utilizing this tactic in 1996 included Triad Management Services. The activity of Triad Management Services is documented at Center for Public Integrity, "The 'Black Hole' Groups," *The Public-I*, at <www.public-i.org/watch_04 033000.htm>.

Family Voices."[8] Finally, this method of advocacy allows groups to accept unlimited contributions to pay for the communications.

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B. Why Conduct Electioneering Outside the FECA Framework?

There are several primary reasons to conduct electioneering outside the FECA framework. First, it permits groups and individuals to avoid disclosure. Second, it allows them to avoid contribution limits. Third, it permits some groups (such as corporations and labor unions) to spend from generally prohibited sources.

1. Avoid disclosure The 1996, 1998 and 2000 election cycles all saw examples of groups who sought to avoid accountability for their communications by pursuing an electioneering advertising /election advocacy strategy rather than limiting their activities to independent expenditures or other activities expressly permitted by the FECA. In 1996, an example of a group that masked its identity was Koch Industries, which financed, at least in part, a group acting in several races several race named, Triad. One of the congressional races where Triad was active in 1996 was the Kansas Third Congressional District.[27] In 1998 the AFL-CIO helped pay for ads in the Connecticut Fifth Congressional District race through a group named the "Coalition to Make Our Voices Heard." Steven Rosenthal defended campaigning under an obscure name in this case saying, "Frankly we've

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[8] Annenberg Public Policy Center, "Issue Ads @ APPC," *University of Pennsylvania*, at <www.appcpenn.org/issueads/gindex.htm>.

[28] Allan J. Cigler, "The 1998 Kansas Third Congressional District Race," in Magleby, *Outside Money*, 88.

taken a page out of their book [other interest groups] because in some places it's much more effective to run an ad by the 'Coalition to Make **[19]** Our Voices Heard' than it is to say paid for by 'the men and women of the AFL-CIO'"[28] Mr. Rosenthal accurately captures the reason why groups will continue to hide their identity-it improves the chances of persuading voters. This is more likely the case when voters would take less seriously a communication from a group they dislike or distrust.

There are many other examples of groups who sought to mask their identity usually while trying to persuade voters to vote against one candidate. One the most active groups in 2000 was "Citizens for Better Medicare." For voters watching or listening to an ad, naming the sponsor group evokes much more positive impression than advertising the name of the pharmaceutical industry, a major underwriter of the group.[29] This technique hides the kinds of interests paying for the advertisement. Another group with an unobjectionable name, the "Committee for Good Common Sense" aired ads that supported incumbent Jay Dickey in the Arkansas Fourth Congressional District race in 2000.[30]

2. Avoid source limitations Federal law has long banned corporations and labor unions from spending treasury funds for campaign communications other than communications to their stockholders, employees, or membership. The ban on using corporate treasury funds for contributions goes back to the Tillman Act of 1907; corporate expenditures in cam-

[29] Rosenthal, lunchtime discussion panel at the Pew Press Conference.

[30] Tim Ryan, executive director, Citizens for Better Medicare, telephone interview by David B. Magleby and Anna Nibley Baker, 14 May 2001.

[31] According to the Annenberg Center the "Committee for Good Common Sense" is run mostly by Republicans with insurance and business ties. See Annenberg Public Policy Center, "Issue Ads @ APPC," *University of Pennsylvania*, at <www.appcpenn.org/issueads/gindex.htm>.

paigns have been banned since 1947. The ban on the use of union treasury funds in campaigns goes back to the Smith-Connally Act of 1943, which was later included in the Taft-Hartley Act in 1947. A rationale for the bans is to reduce the threat that these groups will purchase influence over elected officials through large corporate and union expenditures in federal elections, as well as to prevent the boards of these organizations from spending treasury funds in the Political arena in ways that may not be representative of the members' or shareholders' views.[31]

The ability of corporations and trade unions to effectively campaign through electioneering advertisements and election advocacy makes a sham of these longstanding federal laws. The data CSED has gathered on television and mail communications clearly demonstrates that these communications are indistinguishable from candidate and party ads in terms of their purpose (See Tables 1 and 2).

3. Avoid contribution limits Another reason to conduct electioneering activities outside the FECA is that groups can raise larger amounts of money in less time. The ability to spend a million dollars or more in a particular U.S. House race as the AFL-CIO did in 1996 makes contribution limits to candidates and parties seem very low indeed. Even in Senate Races where spending is typically higher, groups like Citizens for Better Medicare, Pharmaceutical Research and Manufacturers of America, NAACP National Voter Fund, and NARAL, were able to far exceed what individuals, PACs or parties could do through hard money contributions.

[20] C. Nature and Extent of Electioneering Advocacy

As with PACs and other forms of participation in funding candidates, there is substantial diversity in those who engage in electioneering advocacy. CSED found substantial interest-

[32] Anthony Corrado, "A History of Federal Campaign Finance Law," in *Campaign Finance Reform: A Sourcebook* (Washington, D.C.: Brookings Institution Press, 1997).

group election advertising in the 1998 elections. According to studies by the Annenberg Center that looked at electioneering and genuine issue advocacy together, more groups ran these ads in 1997-98 than in 1995-96, and the overall amount of money spent on these ads also rose.[32] And several of the races in our sample had as much campaign activity by interest groups as by candidates. Interest groups focused their efforts on the relatively small number of competitive House and Senate elections: in the twelve House and four Senate races we monitored, 111 interest groups were active in 1998. These groups ran altogether a minimum 218 ads on TV or radio and mounted at least 258 phone banks or direct mail efforts.[33] Most records show that groups used direct mail from before the primary election through Election Day, whereas they used phone banks more in the final month. Television ads aired throughout the election cycle, but most heavily in the final month and a half of campaigning. In contrast, genuine issue ads are more likely to run earlier since rates are cheaper and proximity to an election is less important. Our 1998 data also show that interest groups produced more direct mail, print, radio ads, and phone banks than the political parties but that the parties focused more on television advertisements.[34]

The 2000 presidential primaries provided interest groups an opportunity to influence the choice of both parties' standard bearers. Growing out of their ground-war strategy of 1998, organized labor and the teachers unions mounted a substantial grassroots mobilization for Al Gore, giving special emphasis to the Iowa caucuses and the New Hampshire

[33] Beck, et al., "Issue Advocacy Advertising During the 1996 Campaign," and Jeffrey D. Stranger and Douglas G. Rivlin, "Issue Advocacy During the 1997-98 Election Cycle," a report by the Annenberg Public Policy Center; as cited in Magleby, *Outside Money*, 47.

[34] Magleby, *Outside Money*, 47.

[35] Magleby, *Outside Money*, Figure 3.1, 48.

primary.[35] In the primaries, John McCain was a lightening rod for interest group electioneering attacks in New Hampshire and South Carolina by groups critical of his stand on campaign finance reform, his support for fetal tissue research and his support of an increased tobacco tax. The attacks in New Hampshire did not hurt McCain and may have backfired, but in South Carolina they helped George W. Bush.[36] Some groups generally allied with one party used the primaries to launch attacks on the leading contender in the other party, while other groups sat out the primaries and saved their resources for the general election.[37]

[21] The 2000 primaries had perhaps the best-known example of electioneering advertisements during the New York Republican primary. A group calling itself "Republicans for Clean Air" ran television ads in the New York City and Pennsylvania markets attacking John McCain's environmental record. The ads sparked controversy, partially because no one knew who "Republicans for Clean Air" was. After 3 days the actual fenders of Republicans for Clean Air came forward. It was a group comprised of two brothers, Sam and Charles Wiley of Texas, known to be long-time fi-

[36] Magleby, *Getting Inside the Outside Campaign*, 4; and David B. Magleby, ed., "Outside Money," *PS Online e-Symposium*, June 2001, at <www.apsa.com/PS/juneOI/outsidemoney.cfn> [accessed 6 August 2001].

[37] Linda Fowler, Constantine Spiliotes and Lyn Vavreck, "The Role of Issue Advocacy Groups in the New Hampshire Primary;" and Bill Moore and Danielle Vinson, "The South Carolina Republican Primary," in Magleby, "Outside Money," *PS Online e-Symposium*.

[38] The Sierra Club attacked Bush's environmental record early in the primary season. National Abortion and Reproductive Rights Action League also attacked Bush early, claiming he was a threat to choice on the abortion issue. To a much lesser extent Republican allied groups attacked Gore. See David B. Magleby, "Outside Money in the 2000 Congressional Elections and Presidential Primaries," in Magleby, "Outside Money," *PS Online e-Symposium*.

nancial supporters of then-Governor Bush. Some McCain senior staff believe the ad cost them victory in New York.[38]

Electioneering by interest groups and individuals that is not covered by the FECA includes two general types of communications: first, television and radio advertising, and second, the "ground war," which includes direct mail, telephone, the Internet, newspaper advertising and personal contact. Only the broadcast advertisements are covered by BCRA.

1. Expanded activity Most groups already involved in electioneering advocacy expanded their involvement in the 2000 general elections. Examples of groups who reported increased activity in 2000 are the AFL-CIO,[39] the Chamber of Commerce,[40] NARAL,[41] and the NRA.[42] In the seventeen races we monitored in 2000, at least 237 interest groups (and at least 93 national and state party organizations) communicated with voters.[43] The Annenberg Public Policy Center of the University of Pennsylvania estimates that interest groups

[39] Roy Fletcher, McCain deputy campaign manager, telephone interview by David B. Magleby and Jason Beal, 6 June 2000; as cited in Magleby, *Getting Inside the Outside Campaign*, 4.

[40] Karen Ackerman, AFL-CIO, interview by David B. Magleby, Washington, D.C., 9 November 2000; as cited in Baker and Magleby, "Interest Groups," 59.

[41] Bill Miller, U.S. Chamber of Commerce, telephone interview by David B. Magleby, 18 November 2000; as cited in Baker and Magleby, "Interest Groups," 56.

[42] Will Lutz, deputy communications director, and Gloria Totten, political director, National Abortion and Reproductive Rights Action League (NARAL), interview by David B. Magleby, Washington, D.C., 14 December 2000; as cited in Baker and Magleby, "Interest Groups," 60.

[43] Glen Caroline, National Rifle Association, interview by David B. Magleby, Washington, D.C., 15 November 2000; as cited in Baker and Magleby, "Interest Groups," 60.

[44] Magleby, *Other Campaign*, 229-30

spent an estimated $509 million overall in electioneering advocacy and pure issue advocacy in 1999-2000.[44]

Electioneering campaigning in the 2000 general elections showed greater congruence in issue agendas between party committees and candidates and between allied groups and candidates than in 1998.[45] Some Democratic leaning groups, like the NAACP and Emily's List, that had been active as interest groups or in funding campaigns through hard-money contributions in 2000 added electioneering advocacy to their activities. On the Republican side, new groups conducting electioneering advocacy included the Republican Majority Issues Committee (RMIC) and business and pharmaceutical interests funded Citizens for Better Medicare and Americans for Job Security.[46]

[22] 2. Broadcast and cable electioneering Broadcast advertising is the most visible mode of communicating an electioneering message and is also widely believed to be the most effective for reaching a mass audience. There is also little doubt that this is one of the most expensive. In all of the contests we monitored in 1998 and 2000, interest groups used broadcast, including television and radio, to communicate with voters. As our survey data and focus group data from 2000 demonstrate, interest groups effectively communicate an electioneering message without using the magic words of express advocacy.[47] More than four out of five voters said the interest group's ads "primary objective" or "purpose" was "persuading you to vote for or against a candidate" (See Table 1).

[45] Lorie Slass, "Spending on Issue Ads," in *Issue Advertising in the 1999-2000 Election Cycle* (Philadelphia: Annenberg Public Policy Center at University of Pennsylvania, 2001), 4; at <www.appcpenn.org/political/issueads/1999-2000issueadvocacy.pdf5> [6 August 2001]; as cited in Magleby, *Other Campaign*, 4.

[46] Magleby, *Other Campaign*, 12.

[47] Ibid., 12-13.

[48] Magleby, *Dictum Without Data*.

Broadcast advertising was an especially important element in all of the competitive races we monitored in 2000 and occasionally campaign ads were even broadcast beyond voting district boundaries. In Senate races, television and radio were also major components of the candidate and outside money campaigns.[48] In our 2000 case studies, we conservatively estimate that $99.7 million was spent on radio and television, including cable television in the seventeen races we monitored.[49] When compared to candidate spending on these same media and in these same races, interest groups spent roughly two-thirds as much as candidates. And political parties exceeded either candidates or interest groups in spending on television and radio.[50]

Interest groups and parties also utilize the cheaper and more targeted cable stations. Citizens for Better Medicare made extensive use of cable spending over $70,000 in the California Twenty-seventh District alone.[51] In the Washington Second District in 2000 the Sierra Club spent about $45,000 on cable television ads.[52] Candidates also turned to cable, especially in races like the California Twenty-seventh. Democratic challenger Adam Schiff purchased a total of 21,072 units of airtime from Charter Communications, the Twenty-seventh District's cable television company, for nearly $600,000. James Rogan, Schiff s opponent, went even further purchasing 54,080 units from Charter Communications at a cost of over $1 million. These purchases included seventeen different ads from Rogan and six from Schiff. An

[49] Magleby, *Other Campaign*, 229-30.

[50] Estimates of how much was spent on television in our races are unavoidably imprecise, whether relying on the ad-buy data retrieved from the stations or the CMAG ad buy estimates.

[51] Baker and Magleby, "Interest Groups," 67.

[52] Patrick McGreevy, "California Elections U.S. House; High-Profile Contest in Awash in Soft Money," *Los Angeles Times*, 22 October 2000, home edition.

[53] Todd Donovan and Charles Morrow, "The 2000 Washington Second Congressional District Race," in Magleby, *Other Campaign*, 218.

anonymous Charter Communications employee remarked that this campaign was "buying all available airtime."[53]

Radio is also an effective communications tool for electioneering by interest groups. As with television, if the communications do not use the particular language of express advocacy, **[23]** the groups do not report the expenditures to the FEC, and stations do not provide the same disclosure that they provide for campaign communications by candidates. Academics monitoring our sample of competitive contests in 2000 found the interest groups making use of radio for electioneering efforts included the NRA, Americans for Limited Terms, U.S. Chamber of Commerce, NFIB, NEA, League of Conservation Voters, Million Mom March PAC, Planned Parenthood and the National Right to Life PAC. Of the 105 radio ads we recorded, only 20 ads contained the magic words.

One contest where interest groups made extensive use of radio was the Virginia Senate race in 2000. Radio ads began airing in early October, and various groups funded hundreds of ads. The Sierra Club topped the list with 234 ads, the NRA was second at 155 and the NAACP National Voter Fund aired 62 spots. Although these numbers represent only a sampling of radio stations, our research shows that interest groups outspent the candidates on the radio by a three-to-one ratio, while the parties doubled the amount interest groups spent on the radio.[54] The high numbers of ads by interest groups and parties reflects the ability of these groups to evade FECA contribution and source limits.

[54] Anonymous employee of Charter Communications, interview by Drew Linzer and David Menefee-Libey, 5 October 2000; as cited in Drew Linzer and David Menefee-Libey, "The 2000 California Twenty-Seventh Congressional District Race," in David B. Magleby, ed., *Election Advocacy: Soft Money and Issue Advocacy in the 2000 Congressional Elections* (Provo, UT: Center for the Study of Elections and Democracy at Brigham Young University, 2001), 134.

[55] Holsworth, et.al., "2000 Virginia Senate Race," in Magleby, *Other Campaign*, 118

A sixty-second spot from the Missouri Senate race is a good example of a typical radio ad. The spot begins with Don Wainwright, owner of Wainwright Industries in St. Peters, talking about his employees' health insurance. Wainwright says he's depending on John Ashcroft to get a real patient's bill of rights. The announcer then discusses Ashcroft's record. Wainwright says that Trial Lawyers and their friends in Congress are blocking reforms. The announcer then says, "Senator Ashcroft is fighting for you, call him . . . to say 'keep on fighting.'" The ad sponsor for this particular ad is the Health Benefits Coalition, but the tag line was different for various airings of the commercial. The five tag lines in the St. Louis area included: Business Roundtable, U.S. Chamber of Commerce, NFIB, National Association of Wholesalers-Distributors, and the National Association of Manufacturers. A similar thirty-second ad ran in the Delaware Senate race. In this spot a local businessman from southern Delaware voices his concern about health care for his workers and the ways in which Senator Roth has worked to make this a reality. The business owner says that Trial Lawyers are blocking progress in Washington. An announcer then takes over to explain that Roth has been working on this and encourages voters to call him to say, "Keep on fighting." Business Roundtable paid for the ad.[55] As this example illustrates interest groups can communicate an election message without using the magic words of express advocacy.

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[26] D. Strategies and Techniques of Electioneering Advertisements and Election Advocacy

For the most part, the electioneering advertisements that our study monitored sidestepped disclosure and source limitation because they avoided express advocacy language or

[55] Baker and Magleby, "Interest Groups," 71.

were defined as internal communications.[69] Nevertheless, these communications were nearly universally oriented towards electing or defeating specific federal candidates, and have distinct characteristics demonstrating their electioneering character.

1. Theme and Message While the non-candidate campaigns are presumed to be independent of the candidates there is remarkable congruence between the themes of the candidate campaigns and those of the interest groups and parties. There is also remarkable similarity between the themes and messages raised by the parties through their soft money funded ads and the interest groups through their electioneering advocacy.[70]

The similarity in theme of candidate, party and group funded ads only reinforces the point that to voters the ads are all part of one campaign. The fact that interest groups play by very different rules as to how the ads are paid for and the absence of disclosure from those interest groups does not alter the fact that they are ads were clearly linked to the themes of the **[27]** candidate campaign.

[69] As noted, internal communications not primarily about an election are not reported to the FEC at all. There are no limits on how much can be spent on internal communications.

[70] In the general election races we monitored in 2000 abortion and health care were common themes to both parties and groups, and recurrent mail themes included education, gun control, and Social Security. Despite general similarities, themes differed among groups and groups took up the causes of the parties they supported. For instance, education was a Democratic and Democratic-allied interest group theme. Taxes were the most prominent GOP theme. The economy and taxes together were common themes for both parties and Republican-allied interest groups, but taxes were not a top theme of Democratic allies and were ranked fifth behind jobs, gun control, health care, and abortion. Neither Republicans nor their interest group allies emphasized the environment, but it was a major concern for interest groups supporting Democrats. Interestingly, interest groups on both sides, more than parties, emphasized gun control.

Advertising themes also illustrate the electioneering intent of their sponsors because often they focus on issue that are not of prime concern to the sponsor's mission. For example an interest group doing electioneering primarily focused on the candidates arose in the New Mexico Third District in 1998. The AFL-CIO ran two television issue ad spots, spending more than any other interest group, totaling $183,380. These commercials were shown a total of 427 times. The commercials focused on tax cuts that were paid for by raiding the Social Security trust fund. Both ads had tag lines indicating voters should "call" their representative. But despite union funding, neither of these ads directly relates to core union issues, like working conditions, pay raises or employment benefits. The issue content of these ads, like most electioneering advocacy, appeared to be driven by the issue concerns of the campaign more than the policy focus of the interest group.

The convergence of theme and message can even go so far as to include messenger and images. Candidate campaigns sometimes pick up on the attack of the electioneering advocacy groups. In Washington's Second Congressional District in 2000, for example, the largest radio buy for any party, group, or candidate committee was made by the Building Industry Association of Washington (BIAW). The ad presented the plight of Vicki Klein, a previously anonymous homeowner whose flood-plain zoning problem had been "ignored" by the Democratic candidate, Rick Larsen and the Snohomish County Council on which he served.[71] Some of the mail from Larsen's opponent, John Koster, also featured a quote about flood regulations from "Vicki Klein,

[71] Elliot Sweeny, Building Industry Association of Washington Political Affairs, telephone interview by Todd Donovan, November 2000; as cited in Todd Donovan and Charles Morrow, "The 2000 Washington Second Congressional District Race," in Magleby, *Other Campaign*, 218. Sweeny offered this as a "ballpark estimate" and stated the group spent less than $100,000.

homeowner."[72] Thus groups not only follow candidate campaigns but at times candidate campaigns adopted interest group messages.[73]

Interest groups also play defense on issues through electioneering advocacy, trying to diffuse the impact of issues like Social Security, prescription drug benefits, and expanded support for education. According to Dawn Laguens, Democrat Debbie Stabenow's media consultant, in the 2000 Michigan Senate race, "[Chamber of Commerce] activity was significant in the Michigan Senate race, helping muddy the water on prescription drugs. Pharmaceuticals also played a major role in muddying the water."[74] Interest groups appear to be able to muddy the waters of campaigns by giving themselves names that do not reveal who they are (ie, "Citizens for Better Medicare") and by the asserting that they have a plan with regards to an important issue like prescription drugs.

[28] Interest groups conducting electioneering advertisements appear to recognize the importance of reinforcing candidate themes and messages even more than communicating about the issues of central importance to the interest group. An example of a group attacking a candidate on an issue central to the campaign but not central to the interest group was the 1998 attack on Harry Reid's view on taxes mounted

[72] Donovan and Morrow, "2000 Washington Second Congressional District Race," in Magleby, *Other Campaign*, 218.

[73] Also in 1998 in the Kansas third congressional district, the television ads of the AFL-CIO on social security and health care were seen by Alan Cigler of the University of Kansas as "almost lead-ins to the Moore commercials in early October. For example, one union ad invited viewers to call Snowbarger and protest the Republican stance on Social Security and health care; approximately fifteen minutes later a Moore commercial appeared talking about Moore's support for Social Security and health care choice." See Cigler, "1998 Kansas Third Congressional District Race," in Magleby, *Outside Money*, 86.

[74] Laguens, interview; as cited in Baker and Magleby, "Interest Groups," 58-59.

by the Foundation For Responsible Government, a group affiliated with the American Trucking Association.[75] Other examples of interest groups campaigning on issues not central to the group include National Right to Life and Americans for Tax Reform running ads against John McCain in the New Hampshire primary on campaign finance reform not abortion or taxes.[76]

Electioneering advertisements most frequently oppose a particular candidate by raising doubts about that candidate or criticizing that candidate along some dimension, but occasionally, an interest group devotes most of the time or space in the advertisement to an attack on one candidate and then quickly contrasts that with positives about the preferred candidate. This is fundamentally different from the way genuine issue advocacy works; it generally promotes a particular theme.

2. Masking identity Electioneering advertisements are often run by front groups, created at least in part to mask the identity of those interest groups funding them. Hiding behind a high sounding name usually increases the credibility of the group and thereby its chances of influencing election outcomes. Because disclosure laws do not apply to groups avoiding the magic words of express advocacy, this strategy often escapes the attention of most voters and sometimes even the media in a state. An example of a race in which masked identity troubled editors of at least one newspaper is the 2000 Montana Senate race where Citizens for Better Medicare (CBM) was active. Commenting on the inaccuracy of the CBM ads, a Missoulian editorial concluded that

[75] Tim Fackler, Nathalie Frensley, Eric Herzik, Ted G. Jelen, Todd Kunioka and Michael Bowers, "The 1998 Nevada Senate Race," in Magleby, *Outside Money*, 125.

[76] National Right to Life communicated, at least in part, through independent expenditures in 2000. Fowler, Spiliotes and Vavreck, "The Role of Issue Advocacy Groups in the New Hampshire Primary," in Magleby, *Getting Inside the Outside Campaign*, 31.

Schweitzer had been "zinged ... by cleverly worded, but inaccurate, messages financed by a national group with a name that doesn't represent the forces behind it."[77] Another newspaper, while agreeing about the inaccuracy of CBM ads, went further in castigating CBM. The Billings Gazette labeled one ad a "total misrepresentation of Schweitzer's position. It had the credibility of a cockroach."[78] As previously noted, organized labor occasionally masks its identity as it did in 2000 when it contributed to American Family Voices.

An example-of an interest group which not only masked its identity thorough an innocuous name, but ran ads on a topic unrelated to the function or purpose of the group was The Foundation for Responsible Government (FRG). In 1998 FRG spent nearly $300,000.[79] Who **[29]** was "The Foundation for Responsible Government?" The trucking industry. Upon investigation, Professor Eric Herzik of the University of Nevada-Reno found that the trucking industry was upset with Senator Reid for supporting legislation that would have banned tripletrailer trucks. Rather than discuss their policy difference with Reid on triple-trailer trucks, FRG ran mostly positive ads late in the campaign, discussing Reid's opponent, John Ensign's positions on health care and taxes.[80]

Voters evaluate the source of political communications as well as the content. Some sources are more distrusted than others. When groups believe it is in their political interest to

[77] "Finding Your Way Through the Ad Maze," *Missoulian*, 19 April 2000; as cited in Craig Wilson, "The Montana 2000 Senate and House Races," in Magleby, *Other Campaign*, 142.

[78] "Ads Dump Political Garbage in Montana," Billings Gazette, 21 April 2000; as cited in Wilson, "Montana 2000 Senate and House Races," in Magleby, *Other Campaign*, 142.

[79] David Barnes, *Transportation Topics*, TT Publishing: 22 November 1998, 1 and 27; as cited in Fackler et al, "The 1998 Nevada Senate Race," in Magleby, *Outside Money*, 125.

[80] Fackler, et al., "1998 Nevada Senate Race," in Magleby, *Outside Money*, 125.

campaign in their own name they do so. It is when they masquerade as "Citizens for ..." or "Coalition opposed to ..." that one can assume they fear liability or a less positive response to their message if they presented their true identity. This has often been the case in ballot initiative campaigns and appears to also be true in electioneering advocacy.[81] Most voters work from the assumption that the communications are from the candidates, though in several of the races we monitored, most of the communications were not. In our focus group and web-TV survey in 2000, we demonstrated that voters could not differentiate between the sources of political communications (including mail), and, they assume that communications come from the candidate.[82]

The current system places an unreasonable burden on voters to ascertain who is attempting to persuade them in an election. Our focus groups and survey data from 2000 show that to voters, party and interest group electioneering ads are indistinguishable from candidate ads. (See Table 2.) Even the candidates and their campaign mangers are unable to ascertain who some of the groups running ads were. In the 1998 Nevada Senate race, Mark Emerson, Chief of Staff for John Ensign's campaign said, "No voter out there knows [who the interest groups are], because I didn't even know."[83] A media consultant, David Weeks, working for Ensign in this same race observed, "the clutter on television during the last few weeks of the campaign really prevented our message from getting through as clearly as we would have liked. Voters had a tough time figuring out which ads were run by the candidates, which by the parties, and which by independent

[81] See David B. Magleby, *Direct Legislation: Voting on Ballot Propositions in the United States* (John Hopkins University Press, 1984); See also, Arthur Lupia, "Shortcuts Versus Encyclopedias: Information and Voting Behavior in California Insurance Reform Elections," *American Political Science Review* 88 (1994): 63-76.

[82] Magleby, *Dictum Without Data.*

[83] Emerson, interview; as cited in Fackler, et al., "1998 Nevada Senate Race," in Magleby, *Outside Money*, 122.

groups."[84] Voters are unable distinguish who was behind the advertisement they saw on television, heard on the radio or mail they received. And in the CSED national survey, I found that respondents were often confused as to whether party ads were paid for by candidates or parties. More than 40 percent of the time, the respondents thought the party ads were paid for by a candidate.[85]

[30] The task of unraveling this information is too much even for most news media outlets. Not surprisingly, the news media has a difficult time helping voters sort out who is behind the numerous issue advocacy organizations, as well as the difference between party and candidate communications.[86]

Interest groups are well aware of the difficulty of unmasking their front organization set up to conduct electioneering. In the Connecticut Fifth Congressional District labor campaigned behind a group called "Coalition to Make Our Voices Heard." A combination of their masked identity and labor's emphasis on ground strategies made them difficult to track. Labor "fell below the radar" of journalists, according to Matthew Daly, the political reporter who covered the Maloney/Nielsen race for *The Hartford Courant*.[87]

[84] David Weeks, media consultant, telephone interview by Ted Jelen, 24 June 1999; as cited in Fackler, et al., "1998 Nevada Senate Race," in Magleby, *Outside Money*, 114.

[85] During the focus' group discussions, 75 percent of focus group respondents said that candidate and party soft money ads are indistinguishable. David B. Magleby, "The Impact of Issue Advocacy and Party Soft Money Electioneering" (paper presented at the conference, "Measuring Advertising and Advertising Effectiveness: Political Advertising in the 2000 Elections," Chicago, Illinois, 18 April 2001), 25.

[86] One notable exception is Al Cross of the *Louisville Courier Journal*. Gross and Miller, "1998 Kentucky Senate and Sixth District Races," in Magleby, *Outside Money*, 206.

[87] Matthew Daly, *Hartford Courant* political reporter, interview by Sandra Anglund and Clyde McKee, 30 March 1999; as cited in Anglund

Voters, when asked, have consistently indicated that they would like to know who it is that is conducting electioneering. In 2000 voters in Montana faced a competitive U.S. Senate and a competitive U.S. House race. A late October Montana State University-Billings Poll found that, "78 percent of the survey respondents reported that it was 'very' or 'somewhat important' for them to know who 'pays for or sponsors a political ad.'"[88] Our focus group participants in 2000 had very similar views on the question of the importance of their knowing who is paying for or sponsoring and ad. More than four-fifths (81 %) said it was very or somewhat important to know the identity of the sponsor. In the national Knowledge Networks Survey in 2000, 78 percent said the same thing.

3. Targeting members demographic and other groups Electioneering advocacy comes in two broad categories. First, groups communicate with their members or other interested parties about their views of particular candidates generally. The NRA, a group known for targeting, communicates with its membership its views of candidates in races from state legislature through U.S. President. These communications are provided in magazines provided members as part of their affiliation with NRA and in other means. Other membership groups do the same things and increasingly corporations communicate this kind of message to employees. Groups like the NRA also often both communicate with their membership and also try and influence a larger group of voters likely to agree with their position. For example in the Washington Second Congressional District the NRA sent a "Dear Washington Hunter" mailer, reaching beyond NRA

and McKee, "1998 Connecticut Fifth Congressional District Race," in Magleby, *Outside Money*, 165

[88] Craig Wilson and Joe Floyd, co-directors, "The MSU-Billings Poll," October 2000 (Montana State University: Billings, Mont.) 4-8; as cited in Wilson, "Montana 2000 Senate and House Races," in Magleby, *Other Campaign*, 144.

members to Washington hunters.[89] The National Federation of Independent Business (NFIB) sent out an internal communication that could fold out to become a poster with the intent that store owners would publicly display them.[90]

[31] Interest groups not only target memberships or affiliates, they also take aim at particular states with competitive U.S. Senate races or congressional districts where the outcome is in doubt. In 1998, 2000, and 2002, I conducted numerous interviews with key staff in scores of interest groups to assess where they engage in electioneering advertisements. Appendix D provides a listing of all interest group and party leaders interviewed for the 2000 and 1998 studies. The widely shared view of interest groups is that they campaign where their investment can make a difference and that is almost always in competitive contests. This tendency has been reinforced by the exceedingly close margin of party control in Congress in recent years. Interest groups routinely do their own polls to inform them on where to spend their electioneering advocacy money. For example, before they sent mailings, the NEA conducted surveys to determine "if they could make a difference" with their spending.[91]

Interest groups and parties also note the relative cost of media markets, and when a competitive race occurs in cheap media market, they target more there. Montana in 2000 and Nevada in 1998 provide good examples of this. Lisa Wade of the LCV said, Montana was a cheap media market, so you got lots of value for your money,"[92] and one Montana news-

[89] Magleby, *Other Campaign*, 230. This mail may have been funded by an independent expenditure.

[90] Sharon Wolff, National Federation of Independent Business, interview by David B. Magleby, Washington, D.C.: 14 November 2000.

[91] Kris Hanselman, political director, Washington Education Association, e-mail correspondence with Todd Donovan, December 2000; as cited in Donovan and Morrow, "2000 Washington Second Congressional District Race," in Magleby, *Other Campaign*, 219.

[92] Lisa Wade, League of Conservation Voters (LCV), interview by David B. Magleby, Washington, D.C., 13 November 2000; as cited in

paper even editorialized on the extent of outside advertising in the Senate race when they said, "For better or worse, Montana has become a national political battleground and always will be. The reason is simple. A Senate seat can be purchased cheap in Montana."[93]

Targeting discrete voter groups within the district that are persuadable on an issue with polling and communications has also become a preferred strategy. An example of this strategy is the California Twenty-Seventh Congressional District race in 2000. The National Abortion Rights Action League (NARAL) used independent expenditures and perhaps other money to fund paid phone banks to identify Schiff supporters from a file of ten thousand pro-choice voters it had accumulated over years of telephone identifications. After three or four rounds of persuasive calls, NARAL identified "86 percent to 88 percent" of the file as Schiff supporters. These voters then received get-out-the-vote (GOTV) calls on Election Day, reminding them to vote.[94] NARAL political director Gloria Totten commented, "We consider it our role to go to people who might be predisposed to Jim Rogan ... and take them away from him and give them to Adam Schiff."[95] Chris Mather, NARAL's deputy political director describes the strategy deployed in the Michigan Eight Congressional District as follows, "NARAL's niche in the prochoice movement is we do the best targeted voter contract work. We don't open a phone book." In the Eighth, there are "close to 25,000 pro-choice identified voters," and

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Magleby, *Other Campaign*, 14. LCV did independent expenditures in 2000.

[93] "Burns Is a Proven Voice in D.C. for Montanans," *Missoulian (Mont.)*, 2 November 2000; as cited in Wilson, "Montana 2000 Senate and House Races," in Magleby, *Other Campaign*, 137.

[94] Gloria Totten, NARAL political director, telephone interview by Drew Linzer and David Menefee-Libey, 17 November 2000; as cited in Linzer and Menefee-Libey, "2000 California Twenty-Seventh Congressional District Race," in Magleby, *Other Campaign*, 159.

[95] Ibid., 159.

"we worked 10 percent of the voters needed to win the election."[96] NARAL also used phone canvasses to **[32]** identify 35,000-40,000 voters to call in Washington 2 in 2000.[97] The NARAL activities in California and Michigan may have been funded by an independent expenditure.

Groups opposed to abortion have also used targeted phone banks. Professors Don Gross and Penny Miller of the University of Kentucky monitored the 1998 Kentucky Senate race as well as the Kentucky Sixth Congressional District race in 1998 and learned of targeted phone banks paid for by Right to Life. Phone calls on the Sunday before the election went to registered African Americans before they went to church. The gist of the message was that Democrats Scorsone and Baesler are pro-abortion-on-demand, and that, as good Christians, blacks should vote for pro-life candidates Fletcher and Bunning.[98]

Targeting is also done on television and radio. Consultants can learn the types of voters who view different types of programs and aim their electioneering advertisements at that audience by advertising on those programs. The NAACP National Voter Fund ad on hate crimes in 2000, for example, was aimed at young African American males.[99] This same pattern of targeting broadcast electioneering advocacy messages happens at the congressional district level. A Sierra

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[96] Chris Mather, NARAL's deputy political director, telephone interview by Eric Freedman, 5 December 2000; as cited in Freedman and Carter, "2000 Michigan Eighth Congressional District Race," in Magleby, *Other Campaign*, 176.

[97] Karen Cooper, Washington NARAL, telephone interview by Todd Donovan, November 2000; as cited in Donovan and Morrow, "2000 Washington Second Congressional District Race," in Magleby, *Other Campaign*, 219.

[98] Gross and Miller, "1998 Kentucky Senate and Sixth District Races," in Magleby, *Outside Money*, 201-02. These phone banks may have been an independent expenditure.

[99] Mike Lux, Progressive Strategies CEO, interview by David B. Magleby, Washington, D.C., 14 December 2000.

Club official commenting on the campaign in 2000 in Washington's Second Congressional District indicated that their anti-Koster ad ran primarily on cable during shows directed at "independent women voters aged 25-50 ... in Snohomish and Whatcom County."[100] Records show that in late October they spent about $45,000 on cable TV in that area.[101]

An exception to this widespread practice of investing in highly competitive races is groups who pursue a single issue and ask candidates to pledge to support their position on that issue if elected. The contests in which groups like Americans for Limited Terms becomes involved is therefore limited to those in which one candidate has taken the pledge and the other declined. These contests are not always highly competitive.

4. Timing The timing of electioneering advocacy often suggests coordination among the political parties, candidates and interest groups. Usually, electioneering ads are run in the heat of campaign. As Ken Goldstein and Jonathan Krasno noted, the time of ads is "related to the activity of candidates not the activity of Congress."[102] In some instances, like the Michigan Senate race, groups went in early in the election cycle to help keep Debbie Stabenow (D) competitive while she replenished her campaign war chest. After Governor Carnahan's death in **[33]** Missouri, Democratic party and allied groups capitalized on the tragedy and Re-

[100] Bill Arthur, Sierra Club Northwest Seattle political director, telephone interview by Todd Donovan, December 2000; as cited in Donovan and Morrow, "2000 Washington Second Congressional District Race," in Magleby, *Other Campaign*, 218.

[101] Donovan and Morrow, "2000 Washington Second Congressional District Race," in Magleby, *Other Campaign*, 218. The Sierra Club is another group that both did independent expenditures and election advocacy in 2000. Some of their activity in this district was an independent expenditure.

[102] Krasno and Goldstein, "The Facts About Television Advertising and the McCain-Feingold Bill," 209.

publican-allied groups toned down their attacks.[103] After hearing about the death, the NFIB, for example, stopped the presses on a mailer that attacked Carnahan.[104]

In the contests we monitored in 1998, most interest group electioneering advocacy came in the final weeks of the campaign. In 2000, 58% of the interest group electioneering advocacy came in the last two weeks of the election.

V. Soft Money Electioneering by Political Parties

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B. How Soft Money Violates the Principles of the FECA

As originally intended, soft money provided resources to political parties for activities not linked directly to electing or defeating a particular federal candidate. In the 1982 election, for example, the Republican party mounted a generic, "Vote Republican for a Change" campaign, hoping voters would decide to change which party was in control of the House of Representatives. Generic party bumper stickers, slate mailers and the like were seen as how soft money would be spent. In an FEC advisory opinion the Kansas Republican Party was told that, "expenditures for registration and get-out-the-vote drives need not be attributed as contributions to such candidates unless the drives are made specifically on their behalf."

[103] Martha E. Kropf, Anthony Simones, E. Terrence Jones, Dale Neuman, Allison Hayes and Maureen Gilbride Mears, "The 2000 Missouri Senate Race," in David B. Magleby, ed., *Election Advocacy: Soft Money and Issue Advocacy in the 2000 Congressional Elections* (Provo, UT: Center for the Study of Elections and Democracy at Brigham Young University, 2001), 79-80. "Six thousand [union] volunteers ... walked the streets, delivering the message 'Don't Let the Fire Go Out! Continue the Progress Mel Carnahan Started in Missouri! STAND UP FOR WORKING FAMILIES! Vote Democratic!

[104] Wolff, interview; as cited in Baker and Magleby, "Interest Groups," 58. This would have likely been an independent expenditure.

And finally, "the party may use printed material in a voter registration (or get-out-the-vote) drive which identifies candidates for Federal offices without allocating any costs to particular candidates, if those materials are within the slate card or sample ballot exemption."[107]

1. Contribution limits Because soft money was going to the parties and not the candidates and was not to be spent for the purpose of influencing federal elections, concerns about donors exercising quid pro quo demands on candidates were not great. Similarly concerns about large donors exercising undue influence over candidates, or about parties or corporations being able to deploy their treasury funds were assumed to be less applicable in the soft money exception since the money was to be spent on party-wide activities like voter registration.

Actual experience with soft money has demonstrated that soft money donors and federal candidates are very clearly linked and that connection has been enhanced through joint fundraising or victory committees. Donors who are barred from giving more than $2,000 per election cycle to a candidate can effectively channel unlimited amounts of money to that same contest through a soft money contribution. Moreover, party leaders are typically heavily involved as soft money fundraisers and so donors can develop relationships and ties to leadership.

2. Disclosure Soft money also violates the expectation of transparency or disclosure which was central to the FECA. The original soft money contribution to the national party is disclosed, but donations to state parties need not be disclosed, and parties routinely transfer soft and hard money back and forth to state parties making it difficult to track how soft money is used, and in some cases they even trade hard

[107] Federal Election Commission, *Advisory Opinion* (Washington, D.C.: GPO, 1978), no. 10.

for soft money.[108] The state parties' practice of transferring funds to other state parties further impedes disclosure.

[36] Not only do parties benefit from soft money transfers, but interest groups, by giving soft money to the parties, can help fund an advertising campaign without having it linked to them. In some races an interest group spending money in its own name risks hurting the candidate the group hopes to elect. Such a strategy appears to have been part of the 1998 Nevada U.S. Senate Election. A team of political scientists at the University of Nevada, Las Vegas and the University of Nevada, Reno found that "it seems likely that attention to the efforts of interest groups may have been inhibited by the fact that some interest groups channeled their soft-money expenditures through the political parties. Environmental groups such as the Sierra Club and the League of Conservation Voters provide good cases in point. . . . The environmental groups appear to have feared a counter mobilization or a backlash if their advocacy of the Reid candidacy became too visible, so these groups attempted to influence the election via party contributions."[109]

The expenditure of soft money is also difficult to monitor because the level of detail provided by state parties to the FEC on expenditures is often such that it is difficult to know how the money was spent in terms of advertising, telephones, or other activities.

C. Why Use Soft Money to Conduct Electioneering?

As discussed more fully above, the parties learned that they could effectively communicate federal candidate spe-

[108] For a discussion of such soft money transfers, see Diana Dwyre and Robin Kolodny, "Throwing Out the Rule Book: Party Financing of the 2000 Elections," in *Financing the 2000 Election*, ed. David B. Magleby (Washington, D.C.: Brookings Institution Press, 2002), 146, footnote 30.

[109] Fackler, et al., "1998 Nevada Senate Race," in Magleby, *Outside Money*, 128.

cific messages without sanction from the FEC in the 1996 campaign. This more targeted use of soft money has enhanced its strategic value. The parties learned, as James Jordan of the DSCC puts it, that "what matters is tone, not the revenue source."[110]

1. Avoid contribution and coordinated expenditure limits Soft money as it has developed in effect permits parties to target unlimited resources to any race, avoiding the contribution and coordinated expenditure limits discussed above. The only real constraints on the parties are the amount of hard money they can raise (because soft money generally must be spent in conjunction with hard money) and the number of competitive races worthy of this kind of investment. In the Delaware U.S. Senate race in 2000, for example, the DSCC and DNC could contribute a combined $17,500 while also spending a total of $67,560 in coordinated expenditures.[111] In this race they contributed $16,500 and spent nothing on coordinated expenditures; when these expenditures are added they pale in comparison to the $4.35 million in soft and hard money transfers by the DSCC to Delaware in 2000.[112]

2. Efficiency of Raising Soft Money Soft money is widely seen by party leaders as easier to raise than hard money. As Dave Hansen of the NRSC stated in response to the question, "What is the allure of soft money?" "It's easier

[110] Jim Jordan, Democratic Senatorial Campaign Committee (DSCC), interview by David B. Magleby, Washington, D.C., 19 November 2002; as cited in Magleby, *Other Campaign*, 232.

[111] Federal Election Commission, "National Party Non-federal Activity through the Complete Two Year Election Cycle," press release, <www.fec.gov/press/051501partyfund/tables/nonfedsumm2000.html>, 15 May 2001 [accessed 23 August 2001]. Also, Federal Election Commission, "Record," 26, no. 3 (March 2000): 14-15.

[112] Federal Election Commission, data provided by Paul Clark at the FEC.

to get. You can get it in bigger chunks. [37] Soft money is harder to spend, though."[113]

Another reason raising soft money is easier for the parties is that two important sources, which are prohibited from giving hard money to parties, may give soft money. Corporate and union treasury funds may be used for soft money contributions. The willingness of interested individuals and groups to make large soft money contributions is well established.

Parties can stretch their soft money even further by transferring soft and hard money to state parties where they can achieve a better ratio of soft to hard dollars than if they spent the money themselves.[114] This is because the ratio of soft to hard dollars for party spending if done by the national party committees is 35 percent soft and 65 percent hard for presidential years, and 40 percent soft and 60 percent hard for off years, but if done by state parties the ratio of soft to hard dollars is greater. The reason for this difference is state parties are allowed to calculate their soft/hard ratio based on the ratio of federal offices to all offices on the ballot in any given year. Both political parties have found spending soft money with its accompanying hard money match through their state parties to work smoothly, for the most part, and state officials readily acknowledge they are simply "pass throughs" to the vendors providing the broadcast ads or direct mail. For example, in Michigan Republican State Party Chair, Rusty Hills, said much of the direct mail carried the state party's name but was actually financed with pass-through money.[115]

[113] Dave Hansen, NRSC former executive director, telephone interview by David Magleby, Jason Beal, Anna Nibley Baker, and Emily Walsh, 2 July 2001.

[114] For a discussion of this practice, see Dwyre and Kolodny, "Throwing Out the Rule Book," 146.

[115] Freedman and Carter, "2000 Michigan Eighth Congressional District Race," in Magleby, *Other Campaign*, 174. Another example is the 1998 North Carolina Democratic party soft money spending. University

The ease of raising soft money has been enhanced by joint fundraising committees, which permit the parties and candidates to combine their hard and soft money fundraising efforts. Previously, a donor wishing to contribute hard and soft dollars to a candidate and her/his party had to write separate checks to the candidate, party (hard) and party (soft). Parties had an informal way of tracking the preferences of the donor as to the expenditure of her/his soft money donated in a given cycle. With the advent of joint fundraising committees, sometimes called victory committees, a donor can write a single check and the funds will be allocated according to the donor's wishes and applicable legal limits in terms of hard and soft, candidate and party.

3. Ability to communicate a candidate specific election message Parties have discovered that they can effectively campaign for their candidates and against the opposing candidates with soft money. As the memos from political consultant Dick Morris to the Clinton Gore campaign communicated, parties can very effectively communicate a "vote for" or "vote against" message **[38]** without using those words.[116] Our survey data in 2000 found four out of five voters seeing the party ads as attempts to persuade them to vote against a candidate. (See Table 1.)

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of North Carolina Political Scientist Thad Beyle and Communications Professor Ferrell Guillory found that the Democratic Party established a committee known as the N.C. Democratic Party Transfer Account, and by the end of the campaign, it had received $1.88 million in total contributions from the national party. Companion reports were received from two committees, identified as North Carolina Democratic National Senatorial Campaign Committee Soft Money and N.C. Democratic National Committee Soft Money. These committees were associated with the national Democratic committees and reported disbursements to the state account. The state committee, in turn, reported substantial allocations to the N.C. Democratic Party's federal account for the purpose of media buys. See Thad Beyle and Ferrel Guillory, "North Carolina Senate," in Magleby and Holt, *Outside Money*, 57.

[116] Morris, *Behind the Oval Office*, 141, 623-4.

Party committees have greater control of how their money is spent, even when it is transferred to state parties, with soft money than through contributions. Because coordinated expenditures may only be used for a limited array of purposes, this money is not under the party committee's control as much as soft money donations are.

It is clear from our interviews with party committee staff that the party committees exercise a great deal of control over how soft money is spent. In a few instances where party committees lack confidence in how state parties will utilize the soft money transferred to them, the national parties have spent the money from Washington and foregone the more favorable soft/hard ratio generally available to the state parties.

4. Target resources into competitive races Additional evidence that soft money is about electing or defeating candidates is the fact that it is often spent in a few competitive races. The lack of constraints on where soft money can be spent has meant that it has become a strategy parties use to target additional resources to competitive races. The heightened importance of getting soft money into competitive races is illustrated by the decline in party coordinated expenditure (Table 5) spending especially since 1996. When asked about this pattern, party committee staff indicate that parties chose to divert the hard dollars once given to coordinated expenditures in non-competitive races to hard dollar transfers to states where there were competitive House or Senate contests.

D. Growth of Soft Money Use in Recent Election Cycles

Before 1992, soft money spending was not reported to the FEC. In 1992, soft money spending was greater for Republican committees than for the Democratic committees, and was more concentrated in the DNC and RNC than the congressional committees. Since 1996, parties and interest groups have expanded their largely unregulated soft money-

funded campaigns. Figure 1 plots party soft money receipts for the period 1994-2000. As documented in Figure 1, the congressional campaign committees all effectively started well under $10 million in 1994 and in six years none of them were under $40 million in soft money receipts. Soft money clearly has become a major tool of the congressional campaign committees.

The most dramatic growth in 2000 for any single party committee was for the Democratic Senatorial Campaign Committee (DSCC). In 1994 the DSCC raised $372,448 in soft money, less than 10 percent of what the National Republican Senatorial Committee (NRSC) raised that same year. In the 1999-2000 election cycle, the DSCC raised $63 million, and the NRSC raised $43 million.[117] House Democrats (DCCC) also dramatically increased their soft money receipts, raising more soft money than the House Republicans (NRCC). When all party committees are combined (DNC, DCCC, DSCC, RNC, NRCC, and NRSC), the two parties' soft money receipts **[39]** were at near parity for the first time.[118]

E. Party Soft Money Electioneering

Because of the disclosure limitations on party soft money expenditures discussed above we have found that monitoring the communications efforts of the parties combined with extensive elite interviewing of party officials, campaign staff, consultants and other informed observers is necessary to understand how soft money is actually spent. Such interviews with state party officials have been especially important in tracking soft money in U.S. House contests. Take the Washington Second Congressional District, for example. In

[117] Federal Election Commission, "FEC Reports Increase in Party Fundraising for 2000," press release, <www.fec.gov/press/051501 partyfund/tables/cong2state2000.html>, 15 May 2002 [accessed 27 August 2001].

[118] Dwyre and Kolodny, "Throwing Out the Rule Book" in David B. Magleby, ed., *Financing the 2000 Election*. 142-43.

the 2000 election cycle, Republican and Democratic national committees transferred almost $22 million to Washington State—about 75 percent of which was soft money. The DCCC alone transferred $2.7 million, and the NRCC $2.6 million.[119] The Second District was clearly the most competitive House race in the state, and as a result, much of this money was directed there. A DCCC official reported that nearly all of their transfers to Washington went toward the Second.[120]

1. How soft money is spent Because parties are not required to carefully account for how soft money is expended, precise estimates of the amount spent on television as compared to mail, telephones and other ground war efforts is difficult. But our interviews with state and national party officials present a consistent picture that the party soft money funded campaigns are professionally run, rely heavily on survey research and deploy multi-faceted campaigns that include broadcast ads, direct mail, telephone contacts, personal contacts, and voter mobilization efforts on election day.

Soft money is largely aimed at competitive races. As discussed earlier in this report, and as documented in Figure 2, the party committees expend millions of dollars in competitive U.S. Senate races and hundreds of thousands of dollars and sometimes a million dollars or more in competitive U.S. House races. In small states like Delaware, Nevada or Montana, an expenditure of $2 million or more in party money is substantial. Interviews with party officials from those states and in Washington D.C. found a willingness to

[119] Federal Election Commission (FEC), "Party Fundraising Escalates," press release, 12 January 2001, <fecwebl.fec.gov/press/011201partyfunds.htm>, [accessed 12 January 2001]; as cited in Donovan and Morrow, "2000 Washington Second Congressional District Race," in Magleby, *Other Campaign*, 214.

[120] Karin Johanson, DCCC political director, telephone interview by Jason Beal, 10 January 2001; as cited in Donovan and Morrow, "2000 Washington Second Congressional District Race," in Magleby, *Other Campaign*, 214.

expend extraordinary amounts of soft money in hopes of picking up a seat. For example, "in early October, a spokesman for the Montana Democratic Party said his organization had spent $980,000 on television ads for Schweitzer, which at the time was almost twice as much as the candidate campaign; he also added that they were prepared to spend $400,000 more. The Montana Republican Party estimated its soft money television ad spending for Burns at $400,000.[121]

[40] The New Jersey Twelfth Congressional District contest in 2000 offers a good example. The NRCC financed a large portion of the media advertising supporting Dick Zimmer. In addition, Zimmer's campaign manager, John Holub, said that the NRCC sent a number of mailings emphasizing Zimmer's accomplishments in Congress and attacking Holt's record.[122] In the view of Princeton Political Scientist Adam Berinsky and Kean College Professor of Public Administration Susan Lederman, the DCCC "was a major player in the New Jersey Twelfth District contest as well."[123] Berinsky and Lederman point out that the DCCC spent aggressively in the New York City media market, with over four hundred commercials in the New York area run in

[121] Kathleen McLaughlin, "Sea of Money," *Missoulian (Mont.)*, 2 November 2000; as cited in Wilson, "Montana 2000 Senate and House Races," in Magleby, *Other Campaign*, 137.

[122] John Holub, Zimmer Campaign Manager, telephone interview by Paul Gerber, 21 November 2000; as cited in Berinsky and Lederman, "2000 New Jersey Twelfth Congressional District Race," in Magleby, *Other Campaign*, 187.

[123] Berinsky and Lederman, "2000 New Jersey Twelfth Congressional District Race," in Magleby, *Other Campaign*, 187.

September at a cost of almost $1 million.[124] The DCCC also spent "an estimated $200,000 sending out glossy fliers."[125]

Another race in which both parties invested heavily in a particular house race was the Arkansas Fourth district. Political Scientist Hal Bass found that the DCCC allocated slightly more than $1.5 million to the Arkansas Democratic Party, designating that it should be used independently on candidate Mike Ross's behalf.[126] Similarly, the state and national arms of the Republican Party made about $1.6 million available to boost Dickey's prospects.[127]

Evidence that the parties conduct their own tracking polls was clear in 1998 and 2000. They use data from these polls as a primary basis for their soft money allocation decisions. In the 1998 South Carolina Senate contest party-funded soft money ads became a point of contention, and Republican candidate Bob Inglis, the intended beneficiary of the ads, disavowed them and asked that they be stopped. But "Republican Party officials claimed that their polling showed that the ads helped Inglis."[128] Another example where party strategy

[124] Berinsky and Lederman estimate that the DCCC spent a total of $2.6 million on advertising buys. Berinsky and Lederman, "2000 New Jersey Twelfth Congressional District Race," in Magleby, *Other Campaign*, 187.

[125] Johanson, interview by Jason Beal; as cited in Berinsky and Lederman, "2000 New Jersey Twelfth Congressional District Race," in Magleby, *Other Campaign*, 187-88.

[126] Patrice Hargrave, Arkansas Democratic Party executive director, interview by Harold F. Bass, Kathryn A. Kirkpatrick, and Amber E. Wilson, Little Rock, Ark., 5 December 2000; as cited in Harold F. Bass, Kathryn A. Kirkpatrick, and Amber E. Wilson, "The 2000 Arkansas Fourth Congressional District Race," in Magleby, *Election Advocacy*, 123.

[127] Chris Camahan, Arkansas Republican Party executive director, interview by Bass, Kirkpatrick and Wilson, Little Rock, Ark., 15 November 2000; as cited in Bass, Kirkpatrick and Wilson, "2000 Arkansas Fourth Congressional District Race," 123.

[128] Bill Moore and Danielle Vinson, "The 1998 South Carolina Senate Race," in Magleby, *Outside Money*, 103.

is reported to have been influenced by polling is the Connecticut Fifth Congressional race in 2000. Political Scientists Sandra Anglund and Joanne Miller state that while Republican candidate "Nielsen's campaign manager told us that he was pleased with the NRCC level of support,[129] others suspect that the NRCC had planned to spend more to help Nielsen, but pulled back based on polling and **[41]** perhaps dissatisfaction with Nielsen's campaign tactics."[130]

The previous examples clearly show that the ability of the parties to get their soft money (along with the necessary hard money match) into the right races is an important strategic consideration. In 2000 the Senate Democrats (DSCC) were more effective than their Republican counterparts (NRSC) in transferring soft money into the most competitive Senate races. Table 4 presents the hard and soft money transfers from the national party committees to state parties in the five Senate races monitored in our 2000 study. The ability of Democrats to deliver soft and hard money to the most competitive races was not isolated to our sample.

a. Broadcast and cable electioneering The parties have learned that they can very effectively deliver federal candidate specific TV ads with soft money. Indeed voters see the party soft money funded ads shown in our survey research as more about electing or defeating particular candidates than candidate ads. More than four out of every five respondents

[129] Fergus Cullen, Nielsen campaign manager, interview by Sandra M. Anglund and Joanne M. Miller, West Hartford, Conn., 17 November 2000; as cited in Sandra M. Anglund and Joanne M. Miller, "The 2000 Connecticut Fifth Congressional District Race," in Magleby, *Election Advocacy*, 148.

[130] George Gallo, Connecticut Republicans executive director, interview by Sandra M. Anglund and Joanne M. Miller, 16 November 2000; and Scott Mason, AMPAC regional political director, telephone interview by Sandra M. Anglund and Joanne M. Miller, 20 November 2000; as cited in Anglund and Miller, "2000 Connecticut Fifth Congressional District," in Magleby *Election Advocacy*, 151.

saw the party ads as seeking to "persuade them to vote against a candidate." (See Table 1.)

The political parties as a rule are major players on television and radio in competitive races. For example, in one race, the 1998 Kansas Third Congressional District, "during the last weekend of the campaigns the RNC spent over a quarter of a million dollars in a negative TV blitz..."[131] In the 1998 Nevada Senate race, the medium of choice for the parties was television.[132] In our sample races in 2000, parties were the biggest broadcast spenders, outspending both the candidates and the issue advocacy groups."[133] As noted above, both parties spend considerable money on broadcast ads, even in places like New York City or Los Angeles where such ads are expensive.

The heavy media buys by party committees were a common theme across races in both 1998 and 2000. In the Washington, Second Congressional District race both parties outspent their respective candidates on television and radio by large margins. In the Oklahoma Second Congressional District in 2000, both the NRCC and the DCCC spent heavily on broadcast. "The DCCC spent about $525,000 to run four TV spots, two negative and two positive."[134] They also ran one independent negative radio spot. The NRCC, on the other hand, spent about $400,000 to run five television spots and one radio spot, all negative.[135] Similarly, in the 2000 Kentucky Sixth Congressional District race, the state Demo-

[131] Cigler, "1998 Kansas Third Congressional District Race," in Magleby, *Outside Money*, 85.

[132] Fackler, et al., "1998 Nevada Senate Race," in Magleby, *Outside Money*, 118.

[133] Magleby, "Outside Money," *PS Online e-Symposium*, June 2001, at <www.apsa.com/PS/juneOI/magleby.cfm> [accessed 24 August 2002].

[134] Estimated from the political files at Tulsa TV stations. Rebekah Herrick and Charlie Peadon, "The 2000 Oklahoma Second Congressional District Race," in Magleby, *Election Advocacy*, 231.

[135] Ibid., 231.

cratic Party spent more on television ads than Boesler's own campaign--$770,000 in funds transferred from the DCCC.[136]

[42] There appears to be some variability from year to year in the party committees and in the proportion of party soft money resources devoted to broadcast ads. In races like the 1998 Nevada Senate race, it was frequently reported to us that more than half of party soft money spending in competitive races went to television.[137] Another example where roughly half of party soft money was spent on television is the Connecticut Fifth Congressional District Race in 2000. The DCCC's expenditures were split relatively evenly between television advertising and direct mail.[138] Estimates from party officials of the amount of money going to television went as high as 75 percent at the DCCC.[139]

As noted earlier, interest groups and parties also utilize the often less expensive cable television ads as well. Our ad buy data from the seventeen races in 2000 document that Democratic Party committees and allied groups conducting electioneering advocacy used cable TV much more than Republican Party committees and GOP electioneering advocacy allies. The Democratic allied interest groups purchased nearly three times as many cable spots as Republican allied interest groups (a difference of three thousand spots).

Parties also substantially outspent both interest groups and candidates in radio advertising. In the 2000 Virginia

[136] Penny M. Miller and Donald A. Gross, "The 2000 Kentucky Sixth Congressional District Race," in Magleby, *Election Advocacy*, 177.

[137] The team studying the 1998 Nevada Senate Election report, "Party organizations spent more than $10 million on the Nevada senate race, more than half of it on television advertising." Fackler, et al., "1998 Nevada Senate Race," in Magleby, *Outside Money*, 119.

[138] The DCCC spent $192,000 on Media and $175,000 on direct mail. Karin Johanson, interview by Jason Beal; as cited in Anglund and Miller, "2000 Connecticut Fifth Congressional District," in Magleby, *Election Advocacy*, 150.

[139] Karin Johanson, DCCC political director, interview by David B. Magleby, Washington, D.C., 20 November 2000.

Senate race on the radio the parties doubled the spending of interest groups doing electioneering advocacy, and interest group electioneering exceeded candidate spending by a ratio of three-to-one.[140]

b. Ground war electioneering Both parties have been active in communicating with voters through the mail, on the telephone, via the Internet and with voter mobilization efforts. As with broadcast, these activities are most concentrated in competitive races. Fully 83 percent of respondents in our focus groups in 2000 saw party mail as about electing or defeating a candidate.[141] Parties have found ways to engage in federal candidate specific electioneering using soft money.

The amount of party mail can be substantial in competitive races. In our sample contests in 2000, we detected over 1500 unique election related mail pieces. Approximately three-fourths of party-funded mail is sent out during the three weeks prior to the election.[142] All four congressional campaign committees and most state parties have been listed as the return address on mail. When state parties are doing the mail, they are often expending soft and hard money **[43]** transferred to them by national parties for this purpose. One of the most active party committees in direct mail is the NRCC. John Haskell of Drake University who monitored the Iowa Third Congressional District race in 1998 stated that there was "a massive amount of [party] direct mail on behalf

[140] Holsworth, et.al., "2000 Virginia Senate Race," in Magleby, *Other Campaign*, 118.

[141] Magleby, *Dictum Without Data*, iii and 9.

[142] In 2000, we found 489 unique mail pieces sponsored by the parties, 353 of which were delivered during the last three weeks leading up to the election. David B. Magleby and the Center for the Study of Elections and Democracy, Election Communication Database 2000 [dataset]. Provo, UT: Brigham Young University, Center for the Study of Elections and Democracy [producer and distributor], 2000.

of McKibben," the Republican candidate in that race.[143] And similarly, "the NRCC mail in Michigan's Eighth Congressional District included at least a half-dozen pieces. One mailer attacked Byrum's vote against the state's $37.5 million Elder Prescription Insurance Coverage Program, 'which will provide affordable drug coverage for Michigan seniors.' It urged: 'Call and tell [Byrum] to stop voting against Michigan seniors and their health care needs.' The NRCC's 'Failed for Lack of Attendance' piece slammed Byrum for missing a key vote when attending a fundraiser 'held at a casino.'"[144]

The mail sent out by the parties often reinforces what candidates are communicating in their own commercials. For example in the 1998 Kentucky U.S. Senate race, Republican Candidate Jim Bunning ran an ad of his opponent Scotty Baesler in which Baesler is shown speaking in an angry manner with background music from Wagner's Ride of the Valkyries Kentucky journalists dubbed the ad, the "Hitler Ad."[145] A still image of Baesler from the ad was then used by the Republican party in mail relating to such issues as NAFTA. Two years later, in the 2000 Kentucky Sixth District race, the same image was used in a NRCC mailing. Another race in which the party adopted images from the candidates is the 2000 Michigan Eighth Congressional district race where the Republican state committee's mailings used the Rogers candidate committee campaign logo next to the return address.[146]

The typical pattern in 1998 and 2000 congressional races was for the mail to reinforce the themes the candidates were

[143] John Haskell, "Iowa Third District," in Magleby and Holt, *Outside Money*, 97.

[144] Freedman and Carter, "2000 Michigan Eighth Congressional District Race," in Magleby, *Other Campaign*, 175.

[145] The National Journal Group, Inc., "Kentucky: Fallout from Bunning's 'Hitler' Ad," *The Hotline*, October 9, 1998.

[146] Freedman and Carter, "2000 Michigan Eighth Congressional District Race," in Magleby, *Other Campaign*, 175.

raising. In New Mexico's 1998 Third Congressional District race for example, "The Democratic Party of New Mexico also sent out several direct mail pieces. ... All of these themes were consistent with candidate [Democratic candidate] Udall's campaign message."[147] Another race in which the party echoed the candidate message was in Washington's Second Congressional District. There "large parts of two WSDCC mailings were indistinguishable from two ads sent by Larsen. One particular WSDCC mailer used photos, font, layout, and text that were identical to the content of an ad mailed by Larsen. The party ad and the candidate's ad both also contained identical images of a Koster fundraising letter and identical quotes from the letter stressing Koster's tough stance against abortion."[148]

The Arkansas Fourth Congressional District race in 2000 also saw a substantial amount of party mail. Political Scientist Hal Bass and his associates found that the political parties were the most active combatants in direct mail. The Arkansas Democratic Party sent six mailings, paying over $150,000 for them using funds passed along from the DCCC (Johanson 2001). **[44]** These mailings attacked Dickey on several issues, questioning his commitments to Social Security and higher wages, while heralding Ross's commitment to welfare reform. But in Dickey's defense, the NRCC distributed over a dozen mailings, roughly divided between endorsements of Dickey and attacks on Ross. In fact the Arkansas Republican Party paid over $300,000 in pass-through funds for these mailings that addressed both the candidates' personal qualities and issue stances.[149]

[147] Lonna Rae Atkeson and Anthony C. Coveny, "The 1998 New Mexico Third Congressional District Race," in Magleby, *Outside Money*, 148.

[148] Donovan and Morrow, "2000 Washington Second Congressional District Race," in Magleby, *Other Campaign*, 216-17.

[149] Magleby, "Outside Money," *PS Online e-Symposium*, June 2001, at <www.apsa.com/PS/june01/bass.cfm> [accessed 24 August 2002].

One of the races we monitored in both 1998 and 2000 was the Connecticut Fifth Congressional district. The academics who monitored this race found substantially more mail activity by the party committees in 2000 than there was in 1998. While the state Democrats sent three relatively basic mailings in the 1998 campaign, the DCCC's 2000 campaign included at least six full-color, glossy direct mail brochures, which targeted specific audiences in different parts of the district. Of these, one was an attack piece claiming that Nielsen's "votes threaten our health." On the Republican side, the NRCC, which spent its money centrally to comply with the newly enacted Connecticut ban on national parties transferring money to state parties, used its soft money for television and radio advertising, and the state Republican Party paid for direct mail. Together, the two committees spent $525,000-$700,000. Of the total, the NRCC's portion was $400,000-$525,000, and the Connecticut Republican's, $125,000-$175,000.[150]

Parties also mount telephone campaigns for and against particular candidates. In 2000 party committees mounted more telephone campaign efforts than the candidates and they were more likely to attack than the candidates.[151] The Internet is also a means parties use to communicate their message, although to date not as much as telephone, mail and especially broadcast

A fundamental element of party activity in competitive races is voter mobilization on Election Day. In monitoring Nevada's 1998 Senate race our Nevada academics observed the activity on Election Day. They describe the activity as, "local union leaders collaborat[ing]5 with each other, na-

[150] Anglund and Miller, "2000 Connecticut Fifth Congressional District," in Magleby, *Election Advocacy*, 150.

[151] David B. Magleby and the Center for the Study of Elections and Democracy, Election Communication Database 2000 [dataset]. Provo, UT: Brigham Young University, Center for the Study of Elections and Democracy [producer and distributor], 2000.

tional leaders, and the Democratic Party to mount a massive GOTV effort."[152]

2. Role of state parties in soft money electioneering State parties have largely provided bank accounts and accounting services for the national parties to direct their transferred soft money along with the hard money match to campaign communications aimed at defeating or electing a particular federal candidate. As noted above, between half and three-quarters of this money has been passed through the state party accounts on its way to pay for broadcast advertising.

State parties have also been way stations for national party money spent on direct mail, **[45]** again targeted to particular federal races and not generic party electioneering. For example, the Michigan GOP put resources into only two Michigan House districts in 2000, the Eighth where Rogers was running, and the First, where Democratic incumbent Bart Stupak defeated his challenger. In the Eighth, the party budgeted more than $300,000 for broadcast aids, direct mail, phone banks and yard signs. State Chair, Rusty Hills, said "much of the direct mail carried the state party's name but was actually financed with pass-through money.[153]

F. Strategies and Techniques in Soft Money Electioneering

Soft money funded electioneering is generally funded by the national parties but managed by the state parties. The content, tactics and strategy are generally indistinguishable from the candidate campaigns, except that party campaign communications are generally more negative in tone. The campaigns run by the parties are professional, often using consultants who are running candidate campaigns in other states. These ads undermine the intent of the FECA rules because they are so candidate centered and so substantial,

[152] Bowers, et al., "Nevada Senate Race," in Magleby and Holt, *Outside Money*, 46.

[153] Freedman and Carter, "2000 Michigan Eighth Congressional District Race," in Magleby, *Other Campaign*, 174

permitting very large contributions to enter a particular contest anonymously. Our focus groups and national survey in 2000 found that voters see party television ads as primarily about defeating or electing a particular candidate (See Tables 1 and 2).

1. Theme and message of communications The theme and message of party soft money communications, as previously noted, often closely mirror the theme and message of the candidates. An example of this is the use of the same images and messages by the candidates and parties in Washington's Second Congressional District race in 2000. Here the candidate, party, and group campaigns were often structured on identical themes and issues. In one of Larsen's more heavily played television ads, for example, a narrator attacked Koster's record on abortion rights and suggested that Koster would limit access to birth control. Images from that ad also appeared in a Democratic Party mailer and in one of Larsen's mass-mailed advertisements attacking Koster on reproductive choice. Parts of the Democratic Party mailings and Larsen campaign mailers attacking Koster on abortion were identical."[154] The use of memorable images was also cited previously with regard to the "Hitler ad" in the Kentucky Senate race in 1998.[155]

a. Opposing Particular Candidates Most soft money funded communications attack the candidate of the opposite party. The two parties had nearly identical proportions of attack ads in 2000.[156] Consistent with the pattern across

[154] Donovan and Morrow, "2000 Washington Second Congressional District Race," in Magleby, *Other Campaign*, 213.

[155] Gross and Miller, "1998 Kentucky Senate and Sixth District Races," in Magleby, *Outside Money*, 190.

[156] Of 394 Democratic funded mail, radio and television ads, 68 percent attacked Republicans, while of 454 Republican funded mail, radio and television ads, 66 percent attacked Democrats. David B. Magleby and the Center for the Study of Elections and Democracy, Election Communication Database 2000 [dataset]. Provo, UT: Brigham Young University, Center for the Study of Elections and Democracy [producer and distributor], 2000.

states, the Democratic party in New Mexico's Third Congressional District race in 1998 "ran only issue ads against Redmond [the Republican] and no ads supporting Udall [the Democrat]." The ads originated with the DNC and the DCCC, which provided the soft money necessary to purchase TV time."[157] The Montana At-Large **[46]** House race in 2000 saw both candidates and their parties attacking the other candidate or even attacking groups supporting that candidate. Political scientist Craig Wilson observed that the Republican party and Dennis Rheberg ran "mailings and television commercials linking Nancy Keenan to 'liberal' organizations like NARAL and People for the American Way. For their part, the Keenan campaign and the Democratic Party portrayed Rehberg as an uncaring conservative who favored the rich and would not work to protect Social Security or Medicare or to improve education."[158]

The tendency to use soft money to attack the opposing party candidate was also found in the Washington Second Congressional District Primary. Political Scientists Todd Donovan and Charles Morrow found that "at stations that provided access to records, we found that the WSDP bought $1.5 million in ads, running three ads against Koster: one attacking his positions on reproductive rights, one attacking his positions on education, and one comparing Larsen and Koster. All of the ads echoed the main themes of Larsen's television ads."[159]

[157] Terry Brunner, New Mexico Democratic Party campaign coordinator, telephone interview by Lonna Rae Atkeson and Anthony C. Coveny, 9 November 1998; as cited in Atkeson and Coveny, "1998 New Mexico Third Congressional District Race," in Magleby, *Outside Money*, 146.

[158] Wilson, "Montana 2000 Senate and House Races," in Magleby, *Other Campaign*, 138.

[159] Donovan and Morrow, "2000 Washington Second Congressional District Race," in Magleby, *Other Campaign*, 215.

The tendency of the party ads to take the attack while candidate ads are more positive was something we observed in several races. Overall in our sample races, candidates attack 34% of the time, compared to parties at 44% in 2000.[160] An example of this from the 1998 campaign would be the North Carolina Senate races where Democratic candidate John Edwards ran mostly positive spots but his party "spent nearly $2 million of soft money contributions in a parallel TV issue campaign aimed at Faircloth's voting record." The Democratic National Committee and the Democratic Senatorial Campaign Committee provided the spots and soft money contributions for the state Democratic Party to air the anti-Faircloth commercials. The tag lines did not explicitly instruct voters to support or oppose a candidate, but rather to "call Lauch Faircloth." According to Mike Davis, the consultant who managed the ads, the ads made a difference. He continues that the party funded ads "allowed John and his campaign to stay on the high road by and large. And it allowed the party to be the one to take out the long knives."[161]

One reason for the more frequent attack ads coming from the political parties and interest groups appears to be a shared sense that when an outside group was criticizing or attacking a candidate it was on safer legal ground than when it was promoting its own candidate. One reason that party soft money ads are more negative may be that party lawyers had advised that soft money can more clearly be spent on issue ads that attack one candidate rather than contrast the two candidates.[162] "One media consultant for the Republican Party agreed that it was safer to use attack ads to avoid accu-

[160] David B. Magleby and the Center for the Study of Elections and Democracy, Election Communication Database 2000 [dataset]. Provo, UT: Brigham Young University, Center for the Study of Elections and Democracy [producer and distributor], 2000.

[161] Beyle and Guillory, "North Carolina Senate," in Magleby and Holt, *Outside Money*, 55.

[162] Magleby, *Other Campaign*, 226.

sations of coordination with the candidate when soft money was involved."[163]

[47] b. Countering candidate themes and messages Party soft money funded communications are also surrogate campaigns in that they are also used to counter themes and messages of the opposing candidate or party. Outside money can be tremendously beneficial to candidates because it acts as a surrogate campaign, providing extra advertising support to a candidate when the candidate has run out of, or is low on, funds. Debbie Stabenow experienced this in her 2000 Senate race; unable to afford broadcast ads in the summer, her party and allied groups stepped in and ran ads supporting her. Because of this help, Stabenow was able to conserve her resources for later in the election cycle.[164] The Democratic party played a similar role in Chuck Robb's 2000 Virginia Senate race, spending over $9 million in hard and soft money."[165]

2. Masking identity Because the donors of soft-money are not identified in the actual communication to the voters, soft money itself is a means of masking the identity of donors. In some settings, a party communication will have more credibility than the same communication bearing the name of the donor. For example, trial lawyers who are a large soft money donor to Democrats, may have decided that they will be more successful campaigning through the Democratic party than buying their own ads.

[163] Moore and Vinson, "1998 South Carolina Senate Race," in Magleby, *Outside Money*, 99.

[164] Michael Traugott, "The 2000 Michigan Senate Race," in Magleby, *Election Advocacy*, 62.

[165] Federal Election Commission, "FEC Reports Increase in Party Fundraising for 2000," press release, <www.fec.gov/press/051501 partyfund/tables/cong2state2000.html>, 15 May 2002 [accessed 27 August 2001]; as cited in Holsworth, et. al., "2000 Virginia Senate Race," in Magleby, *Other Campaign*, 107.

3. Targeting particular demographic or other groups One segment that is frequently a target of party soft money funded mail is seniors, and predictably one of the issues stressed with seniors is social security. Here as in other issue dimensions, the coordination of message between the candidates and their parties is apparent. An example is the Utah Second Congressional District race between Lily Eskelsen (D) and Merrill Cook (R) in 1998. One of the Democratic party mailers sent to seniors echoed the Eskelsen campaign against Cook's stand on Social Security with a picture of crossed fingers that reads, "Saying one thing; then doing another." Eskelsen's own campaign ads said, "Merrill Cook–Doing, Saying, and Spending Anything to Get Elected."[166]

Latino voters are another increasingly important target. The Democratic party targeted them in the California Twenty-seventh Congressional District race. David Menefee-Libey and Drew Linzer learned that Democratic party "mailers complemented Schiff s mail program, which, despite its size and sophistication, contained no ads targeted at Latino issues. Both Danny Medress of the California Democratic Party and Karin Johanson of the DCCC said that they believe Latinos were the Democrats' base in the Twenty-seventh district."[167] The investment on activating Latinos was substantial; "State and national Democrats, working in concert, spent $1.6 million on television ads and sent five direct mail pieces in English and Spanish just to Latino households."[168]

[48] 4. Timing In all of the races we monitored, the parties and candidates both ran ads in the crucial final weeks of the campaign. The Illinois Seventeenth Congressional Dis-

[166] Jay Goodliffe, "The 1998 Utah Second Congressional District Race," in Magleby, *Outside Money*, 177.

[167] Karin Johanson, interview by David B. Magleby. See also Danny Medress, telephone interview by Drew Linzer and David Menefee-Libey, 1 November 2000; as cited in Linzer and Menefee-Libey, "2000 California Twenty-Seventh Congressional District Race," in Magleby, *Other Campaign*, 154.

[168] Ibid., 154.

trict race in 1998 is illustrative of this. John Shockley monitored this race and found, that "the Republican and Democratic Parties' issue advocacy ads, through both TV and direct mail, ran right through election eve, alongside the candidates' own commercials, and they raised issues that the candidates' ads were using."[169]

In some races, the parties also stepped in during critical earlier periods of the campaign and helped keep their candidate viable, either by promoting her or attacking her opponent. An example of this is the 2000 Michigan Senate race. Michael Traugott observed "Stabenow, the challenger, had her advertising campaign propped up by soft money expenditures and interest groups during periods when she was reserving her resources."[170] Another reason why parties may invest while a candidate is relatively quiet is that the candidate has just won a competitive primary and has depleted resources. The party by spending substantial sums of soft money may keep that candidate viable until the candidate can raise more money. This occurred in the Oklahoma Second Congressional district race in 2000. Rebekah Herrick found that " Because Carson had to win the runoff, he had little time and money to start the general election.[171] Thus, the DCCC stepped in and ran a positive piece about Carson while he was raising money to run his own ads. This allowed Carson to preempt negative attacks."[172]

[169] John S. Shockley, "Profile of Illinois Seventeenth Congressional District," in Magleby and Holt, *Outside Money*, 106.

[170] Michael W. Traugott, "The 2000 Michigan Senate Race," in Magleby, *Other Campaign*, 108.

[171] Doug Heyl, DCCC, telephone interview by Rebekah Herrick, 6 December 2000; as cited in Herrick and Peadon, "2000 Oklahoma Second Congressional District," in Magleby, *Election Advocacy*.

[172] Magleby, "Outside Money," *PS Online e-Symposium*, June 2001, at <www.apsa.com/PS/june01/herrick.cfm> [accessed 24 August 2002].

G. Coordination Between Parties and Candidates, Between Parties and Groups.

Academics in several races heard from party and campaign professionals that candidates were well aware of the activities of their political parties and vice versa. A team of political scientists who monitored the 2000 Virginia Senate race found, for instance, that "the party's [Republican] campaign was closely coordinated with the Allen campaign, and it reinforced the basic themes that the campaign had developed."[173] For example in the 1998 New Mexico Third Congressional District race, Lonna Rae Atkeson observes, "both parties indicated that they did not explicitly discuss or directly correlate their campaign themes with the candidates. However, both political parties indicated that such discussions were completely unnecessary because they knew their candidates and easily maintained consistent principles with them."[174] Atkeson's conclusion about the extent to which the parties and candidates were on the same page was also the assessment of the team of academics who studied the 1998 Nevada Senate race. They conclude, "although we were not privy to decisions by parties, candidates, or outside interests to **[49]** coordinate activities, several pieces of circumstantial evidence lead us to emphasize the coordinating function of Nevada's party organization."[175]

[173] Holsworth, et. al., "2000 Virginia Senate Race," in Magleby, *Other Campaign*, 115.

[174] John Dendahl, New Mexico Republican Party chair, interview by Lonna Rae Atkeson and Anthony C. Coveny, Santa Fe, New M., 2 April 1999; Fred Harris, New Mexico Democratic Party chair, interview by Lonna Rae Atkeson and Anthony C. Coveny, Albuquerque, New M., 1 April 1999; Terry Brunner, interview; as cited in Atkeson and Coveny, "1998 New Mexico Third Congressional District Race," in Magleby, *Outside Money*, 145.

[175] Fackler, et al., "1998 Nevada Senate Race," in Magleby, *Outside Money*, 116.

H. To What Extent Is Soft Money Spent on Electioneering or Party Building?

When parties want to help elect or defeat a candidate, they may make contributions, spend money in coordination with the preferred candidate or make an independent expenditure. Contributions and coordinated expenditures are fully disclosed and limited. Independent expenditures are disclosed but not limited. All of these party activities are funded with contributions that are subject to the annual contribution limits for those making the contribution.

Our monitoring of state and federal party activity in 1998 and 2000 finds that party committees make no secret of their specific electioneering purposes in using soft money. Evidence that the real goal of soft money expenditures is winning particular elections and not party infrastructure is demonstrated in how the money has been allocated. Congressional campaign committees have clearly allocated their soft money to a relatively small number of competitive races.

As I discuss elsewhere in this report, our estimate is that over half, and sometimes as much as three-quarters, of soft money expenditures go to broadcast advertising. The content of these advertisements are candidate and not party centered. Indeed, only 15 percent of the ads in 1998 and 7 percent of the ads in 2000 mentioned the party by name in the ad, except in the tag line indicating which party committee paid for the ad.[176] The focus or referent of the ads is the particular candidate in an upcoming election, and there is no mention of any other candidate from the same party in most of the ads. Another empirical regularity discussed elsewhere in the report is that most party ads have as a primary theme an attack on the candidate of the opposing party. The content of such ads does nothing to foster party infrastructure. Those who make the ads and manage the campaigns are consultants, who

[176] Krasno and Goldstein, "The Facts About Television Advertising and the McCain-Feingold Bill," 210.

often do not even reside in the state where the election is taking place.

The second most common way soft money is expended is through direct mail. This campaign tool again is, in format, content and theme, very candidate centered. As we discuss elsewhere, parties even occasionally use themes and images taken directly from candidate communications. The lists for the mail are typically acquired from vendors who specialize in lists of registered voters, sorted along various dimensions. There appears to be little or no involvement of the state or local party organizations in the construction of the lists. Consultants with no enduring relationship with the state or local party also largely manage recorded phone calls, Internet communications, and other voter contact devices.

What elements of parties are then enhanced or built with soft money? The answer is the role of campaign consultants, accountants and party committee chairs. This latter category is made especially more powerful because of the very limited array of contests in which substantial amounts of soft money are targeted. As with candidate campaigns, there is little of enduring **[50]** "party-building" value in these transitory expenditures. One element of soft money expenditures that may have a lingering effect on party infrastructure is voter lists. To the extent these lists are kept and updated, this activity may aid in further party efforts.

Report of Thomas E. Mann

I. Qualifications

My name is Thomas E. Mann. I am the W. Averell Harriman Chair and Senior Fellow at the Brookings Institution. I served as Director of the Governmental Studies Program at Brookings between 1987 and 1999 and as Executive Director of the American Political Science Association from 1981 to 1987. I earned my Ph.D. in political science at the University of Michigan in 1977, specializing in elections, parties, public opinion, Congress, and American political behavior. A copy of my complete CV is attached.

I have written or edited numerous books and articles on these and related subjects. I have taught at Princeton University, Johns Hopkins University, the University of Virginia, Georgetown University and American University and delivered invited lectures at many other colleges and universities and at scholarly meetings. I was elected a Fellow of the American Academy of Arts and Sciences and presented with the Charles E. Merriam- Award (for "a significant contribution to the art of government through the application of social science research") and the Frank J. Goodnow Award (for "distinguished service") by the American Political Science Association.

Over the last decade, much of my research and writing has focused on campaign finance in the United States and in other countries. In 1995, I assembled a Brookings Working Group on Campaign Finance Reform to evaluate alternative approaches to reform (Brookings 1996). I also started a campaign finance reform Web site at Brookings, which is regularly updated with materials on campaign finance law, administration, and politics (www.brookings.edu/campaignfinance). After the 1996

elections I joined several other scholars in analyzing the most serious problems with the campaign finance regulatory regime and in formulating a strategy to deal with those problems. We produced a report entitled "Five Ideas For Practical Campaign Reform," which was widely [2] circulated in the policy community (Ornstein et. al. 1996). Based on this work, I took an active role in the public debate on campaign finance reform over the last six years. In 1997, I co-edited *Campaign Finance Reform: A Sourcebook*; in 2002, I co-authored a reformatted and updated edition of this volume, which is being published by Brookings as *The New Campaign Finance Sourcebook*. I have not testified as an expert at trial or by deposition in any other case within the last four years.

II. Introduction and Summary

My primary purpose in preparing this statement is to provide a description and analysis of the development of federal campaign finance law and practice leading up to the enactment of the Bipartisan Campaign Reform Act of 2002 (BCRA). I will briefly review the major laws passed by Congress to regulate the flow of money in federal elections during the first half of the 20th century – most importantly the bans on corporate and union treasury funding of federal elections – as well as the central features of the regulatory regime defined by the 1974 amendments to the Federal Election Campaign Act (FECA). I will then discuss how that regime was undermined by the emergence of party "soft money"[1] and of electioneering under the guise of issue advocacy. Finally, I will discuss how the collapse of the FECA regime has transformed the role of political parties, elected officials, corporations and unions in the electoral

[1] Soft money is an informal term that refers to "nonfederal" funds raised by political parties outside of federal limits on the source or size of contributions and ostensibly used for purposes other than influencing federal elections. Hard money refers to federal funds raised, spent, and publicly disclosed according to terms set by federal law.

process and created glaring conflicts of interest and a widespread perception of corruption in the policy process.

III. Early Legislative History

Financing campaigns for federal office has been a concern of party and elected officials [3] since mass suffrage emerged in the Jacksonian era of the 1820s and 1830s. The need to communicate with a growing number of voters required parties to raise increasing amounts of campaign funds. For the next half-century, party leaders relied primarily upon an extensive patronage system for campaign money (Pollock 1928). But the passage of the Pendleton Civil Service Act of 1883, which outlawed party assessments on federal officeholders, initiated the end of one political financing era and the start of another. Soon political parties turned to the private sector, particularly corporations, for campaign funds. By the election of 1896, under the direction of William McKinley's legendary campaign strategist Mark Hanna, corporations were called upon to provide the bulk of campaign funds (Overacker 1932; Thayer 1973).

Critics charged that corporations and other wealthy donors were corrupting government and gaining special favors in return for their campaign gifts. In 1904, Democratic presidential nominee Alton B. Parker charged that corporations were providing President Theodore Roosevelt large campaign donations to buy influence with the administration. Roosevelt denied the charge but subsequently issued calls for campaign finance reform in his 1905 and 1906 messages to Congress. In 1907 Congress passed the Tillman Act, which prohibited corporations and national banks from making contributions in connection with federal election campaigns (Corrado 1997).

Subsequent reforms were enacted to require disclosure of campaign receipts and expenditures (1910), to limit expenditures in federal campaigns (1911), to broaden disclosure and raise spending limits (1925), and to limit

contributions to federal candidates and national political parties (1940). But in each case, Congress failed to establish an effective enforcement mechanism or to close obvious loopholes, rendering the practical consequences of the legislation much less significant than the stated objectives (Overacker 1932; Sorauf 1988; Corrado 1997). Political **[4]** parties remained the major financial intermediaries throughout the first half of the century, relying heavily on a relatively small number of large individual donors (Overacker 1932; Heard 1960).

The growth of organized labor as a political force in national politics led Congress in 1943 to enact a ban on union treasury contributions in federal elections comparable to the corporate ban in the Tillman Act. Because this measure was adopted as a war measure, it automatically expired six months after the end of the war. It was made permanent by the Taft-Hartley Act of 1947 and, like the ban on corporate donations, has been a permanent feature of federal election law ever since (Corrado 1997).

The rise of television and the increasingly candidate-centered nature of federal election campaigns after World War II led to a substantial increase in campaign costs and growing concerns about political financing. But it was not until the early 1970s that Congress began to wrestle seriously with the shortcomings of the old system and the challenges of the new. The Revenue Act of 1971 created a presidential public financing system funded with an income tax check-off, but its effective date was delayed until the 1976 election. Congress also passed the Federal Election Campaign Act of 1971 (FECA), which strengthened reporting requirements and repealed existing limits on contributions and expenditures that had proven ineffective. But it retained the ban on corporate and labor union contributions. It also put new limits on the amount candidates could contribute to their own campaigns and on expenditures for media advertising in presidential, Senate, and House elections (Sorauf 1988).

The fundraising scandals associated with Watergate and the committee to reelect President Richard Nixon – featuring attaché cases stuffed with thousands of dollars, illegal corporate contributions, and conduits to hide the original source of contributions – led Congress to return to the campaign finance drawing board (Sorauf 1988). In 1974, they produced major amendments to **[5]** FECA, which constituted the most serious and ambitious effort ever to regulate the flow of money in federal elections.

IV. The FECA Regulatory Regime

The 1974 amendments scrapped the 1971 limits on media advertising but replaced them with an elaborate set of limits on contributions and expenditures. The amendments also provided for public financing of presidential elections and created a new agency, the Federal Election Commission (FEC), to administer a strengthened disclosure system and to enforce the other provisions of the law. Barely a year after the 1974 amendments to FECA were signed into law, the Supreme Court in *Buckley v. Valeo* upheld the constitutionality of the contribution limits, disclosure requirements, and the presidential public financing system. But it struck down the limits on expenditures (by a candidate's campaign, by a candidate with personal funds, or by others spending independently), except for voluntary limits tied to public financing in presidential elections, and narrowed the class of political communications by independent groups subject to disclosure and limits on the source and size of contributions. For the purposes of this report, two sets of provisions are particularly germane: those governing the role of corporations and labor unions, and those governing political parties.

A. Corporations and Labor Unions

The new regulatory regime included one very familiar element: a ban on corporate and union contributions and expenditures in connection with a federal election. FECA

added some enforcement bite to these decades-old prohibitions by also making it unlawful for anyone to accept such contributions. Two exemptions from this ban were included in the law. The first, the press exemption, specified that the term "expenditure" does not include "any news story, commentary, or editorial distributed through the facilities of any **[6]** broadcasting station, newspaper, magazine or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate." The second, the internal communications exemption, permits corporations to communicate with their restricted class (i.e. stockholders and executive and administrative personnel and their families) and unions to communicate with their members without any limitations. Finally, while continuing the ban on the use of general treasury funds of corporations and unions in connection with a federal election, the new law allowed thse organizations to set up political committees as separate segregated funds. These funds, one form of political action committee (PAC), whose administrative and fundraising expenses may be paid for by their parent corporation or union, raise voluntary contributions from their restricted classes and are subject to federal limitations (Potter 1997).

The intent of Congress as revealed by these provisions in the 1974 amendments to FECA was to ensure that corporate and labor union treasuries not be tapped to finance general federal election campaign activity. Decades of disappointing experience with earlier bans on corporate and union funding led not to a repeal of such bans but to a more rigorous regulatory strategy to make them enforceable.

B. Political Parties

The 1974 amendments to FECA treated political party committees as a type of "political committee" that is required to register with the FEC and is subject to federal limitations on amounts and sources of contributions. The latter included a prohibition on donations from corporations

and labor unions. But party committees, as part of the official political party structure at the national, state, or local level, were treated differently than other political committees in several respects. Individuals could contribute up to $20,000 per year to national party committees and an additional **[7]** $5,000 to a state party committee. Party committees could transfer unlimited sums to other party committees, without such transfers being treated as contributions. The national committees of each party could together contribute $17,500 during an election cycle to a candidate for the U.S. Senate. And national and state parties could make limited "coordinated" expenditures on behalf of their federal candidates. The expenditure amounts varied by office and state population, and were indexed to inflation.

With one exception, no reference was made in the law to different types and purposes of party accounts, one subject to the limitations of federal law, the other not. The text of the law includes no mention of "federal" or "nonfederal" accounts, much less "hard" or "soft" money. The sole exception to the law's limitations on contributions to party committees was that donations to building funds of national or state parties were exempt.

C. Groundwork for Soft Money

As soon as these limits on party funding went into effect in the 1976 elections, two sets of concerns – dealing with grassroots activity and the federal system – arose about the interpretation and impact of the law as it applied to political parties. The first – that traditional grassroots party activity was inappropriately and harmfully being subjected to limits on coordinated party spending – led Congress in 1979 to amend FECA. The 1979 revision is widely but inaccurately believed to have created soft money. Instead, soft money resulted from the response of the FEC to a second concern arising out of the federal system: how best to accommodate the fact that party organizations have roles in both federal and nonfederal election activity.

1. The 1979 Amendments to the FECA

One important feature of the 1979 amendments to the FECA was designed to allow state and local parties to spend unlimited amounts of funds raised under the act for grassroots campaign **[8]** materials and activities. Much of the traditional party paraphernalia and volunteer activities was reduced in the 1976 elections on the presumption that the FECA required them to be treated as in-kind contributions from the parties to federal candidates and therefore subject to limits. Congress in 1979 narrowly defined three sets of election-related activities by state and local parties that were exempt from the limitations on party contributions to and coordinated spending on behalf of federal candidates. These included grassroots campaign materials (e.g. yard signs and bumper stickers), slate cards and sample ballots, and voter registration and get-out-the-vote (GOTV) activities on behalf of the party's presidential ticket. Congress specified that these exempted sets of activities did not include the use of any broadcasting, newspaper, magazine, billboard, direct mail or other general public communication or political advertising. Moreover, to qualify for these exemptions from limitations on contributions and coordinated spending by parties, funds for these exempt activities had to be raised in compliance with FECA. In other words, the 1979 amendments did not authorize national party committees to accept unlimited contributions or to accept corporate or union treasury funds. They simply expanded the use that state and local parties could make of their federal (hard money) funds (Corrado 1997a).

2. FEC Rulings on Federal and Nonfederal Funds

An entirely separate set of administrative actions was laying the predicate for national parties to begin raising funds not subject to federal source and amount restrictions. The FECA limited party financing of activities conducted in connection with federal elections. But what of state and local elections? Parties clearly have interests in elections for state

and local office. Many state campaign finance laws are more permissive than federal law, allowing contributions from corporations and unions and higher or unlimited donations from individuals and PACs[2]. (Some, **[9]** albeit many fewer, are more restrictive.) To what extent do federal restrictions apply when party activities have an impact on both federal and state and local elections? The FEC began grappling with this question soon after it was established. In a series of advisory opinions, the Commission sought to ensure that a portion of state party activities benefiting both federal and nonfederal candidates be paid for with hard money. In Advisory Opinion 1975-21, the Commission ruled that a local party committee had to use hard dollars to pay for a part of its administrative expenses and voter registration drives, on the grounds that these functions have an indirect effect on federal elections. It used this opinion in regulations it issued in 1977 governing allocation of administrative expenses between federal and nonfederal accounts. The allocation was to be made "in proportion to the amount of funds expended on federal and non-federal elections, or on another reasonable basis" (11 CFR 106.1(e) 1978).

The next year the Commission took an even tougher position on the use of nonfederal funds for voter registration and GOTV activities by party committees. In response to a request for guidance from the Illinois Republican State Central Committee, the Commission in Advisory Opinion 1976-72 approved the allocation of party overhead and administrative costs between federal and nonfederal accounts, based on the proportion of federal to state races being held that year. But it prohibited the use of nonfederal funds to finance such federal election-related activities as voter registration and GOTV: "Even though the Illinois law apparently permits corporate contributions for State

[2]Table 1 summarizes the provisions of each state's law governing contributions to political parties, based on information available from the Federal Election Commission as of 2000.

elections, corporate/union treasury funds may not be used to fund any portion of a registration or get-out-the-vote drive conducted by a political party" (FEC AO 1976-72).

Less than two years later the Commission reversed its position. The Kansas Republican State Committee requested permission to use corporate and union funds, which were legal under **[10]** Kansas law, to finance a portion of their voter drive that would benefit federal and state candidates. This time the Commission agreed, concluding in Advisory Opinion 1978-10 that expenses for voter registration and GOTV should be allocated between federal and nonfederal accounts in the same manner as party administrative costs.

At this point the FEC rulings on party financing had been made in response to state party requests for guidance on how the financing of their traditional activities was affected by the new federal election law. What emerged was that state parties had to maintain both federal and nonfederal accounts and allocate funds from the two accounts in a manner consistent with federal law. Direct assistance to federal candidates must be financed exclusively with federal funds. Comparable assistance to state and local candidates could be funded entirely with nonfederal funds. State party overhead and administrative expenses were to be allocated proportionately between federal and nonfederal accounts. Initially voter registration and GOTV were treated in the same way as aid to candidates – as a federal election activity requiring exclusively federal funds – but then the FEC reversed course and allowed state parties to allocate the costs of voter drives between the two accounts (FEC AD 00-95 2000).

Soon national party officials argued that the Commission rulings recognizing federal and nonfederal state party roles and financing arrangements should apply to them as well. They contended that national parties assist candidates for federal, state and local office; that they work with state and local party organizations on a variety of party-

building and campaign activities; and that, therefore, they too ought to be able to maintain separate federal and nonfederal accounts, finance their nonfederal election activity with nonfederal funds, and allocate administrative and other expenses for joint federal/nonfederal activities between the two accounts. The Commission agreed. In Advisory Opinion 1979-17, it stated that a national party committee could establish a **[11]** separate account "for the deposit and disbursement of funds designated specifically and exclusively to finance national party activity limited to influencing the nomination or election of candidates for public office other than elective 'federal office'" (FEC AO 1979-17). The Commission thereby permitted the national parties to raise corporate and union funds and solicit unlimited donations from individuals "for the exclusive and limited purpose of influencing the nomination or election of candidates for nonfederal office" (FEC AO 1979-17).

V. The Rise of Soft Money

Thus, at the same time Congress permitted state and local party organizations to spend unlimited amounts of federal funds on certain grassroots activities that benefited federal as well as state and local candidates, the FEC allowed parties (including national party committees) to pay for a share of the costs of these joint activities with funds not subject to federal limits. The convergence of these two regulatory changes set the stage for the solicitation and expenditure of so-called "soft money" in the 1980 election cycle. Soft money could be raised by national, state or local party committees, under limits, if any, set only by state, not federal law, and used to finance the ostensibly nonfederal share of the costs of these joint federal/nonfederal party activities.

A. Developments in the 1980s

The national parties quickly took advantage of this opportunity. They solicited funds for their nonfederal

accounts from corporations, unions, and individuals who had already given the maximum amount permitted by federal law. The parties used these soft dollars to cover a portion of their administrative and fundraising costs as well as to finance a share of GOTV activities in states targeted for their presidential ticket or for crucial Senate races. The national parties often took the lead in raising the requisite amount of hard and soft dollars, which they then transferred to the state **[12]** party committees that were conducting the voter drives (Alexander 1983; Alexander and Haggerty 1987; Alexander and Bauer 1991; Corrado 1997a).

Soft money became an important part of national party finance beginning in the 1980 election. Just what amount of soft money activity the parties pursued in the 1980s is less certain. "Nonfederal" funds were not subject to federal disclosure requirements, only to the disclosure laws in states where soft money was spent. Many of these state requirements were nonexistent or ineffective. Thus, we have to rely on estimates of soft money activity in the 1980s rather than official reports of receipts and expenditures. Herbert Alexander, then director of the Citizens Research Foundation, is widely acknowledged as the most authoritative source of party campaign finance data during this period. Starting with the 1992 election cycle, when the FEC first began collecting and reporting data on nonfederal as well as federal accounts of national party committees, we can use official FEC data. Building on Alexander's work and FEC data, Anthony Corrado has assembled the best available data on national party spending between 1976 and 1998. I have updated his table with FEC data on the 2000 election cycle, added a column that computes soft money spending as a share of all national party spending, and reproduced it as Table 2 in this report. Chart 1 graphically displays the changes between 1976 and 2000. Table 3 presents party hard and soft money expenditures adjusted for inflation.

In 1980 the national Republican party spent roughly $15 million in soft money, the Democrats $4 million. This constituted 9% of total spending by the two national parties. In 1984 the amount of soft money spent by the national parties increased marginally to $21.6 million but it constituted a smaller share (5%) of total national party activity. In 1988, however, that pattern was altered. Party soft money spending more than doubled to $45 million, which was 11% of national party totals, and the Democrats reached parity with the Republicans on the soft money side of the ledger.

During this decade the national party committees explored the most efficient methods of allocating expenses between federal and nonfederal accounts and the most advantageous ways of spending soft money. The FEC approved alternative methods of allocation but gave party committees wide leeway in using "any reasonable basis" (11 CFR 106.1(e) 1978). Naturally, the parties found most attractive those allocation methods that allowed them to pay for as much of their expenses as possible with soft money. Priority in spending soft money was given to GOTV programs conducted by state party committees in presidential battleground states. The national parties also came to rely on soft money to cover an increasing share of the costs of their staff and operating expenses. By 1988, both parties had developed effective means of courting large soft money donors. After the election, Republicans revealed that they had received gifts of $100,000 each from 267 donors; Democrats counted 130 donors contributing $100,000 or more (Alexander and Bauer 1991).

The rise of soft money did not go unnoticed or unchallenged. In 1984, Common Cause petitioned the FEC to issue new rules relating to the use of soft money, based on the charge that party committees were unlawfully using nonfederal funds to influence federal elections. The Commission denied the petition in 1986, but Common Cause

challenged that denial in the U.S. District Court. The court rejected the group's argument that no allocation method is permissible under FECA but agreed that the Commission's policy of allowing state party committees to allocate expenses for certain joint activities on "any reasonable basis" was contrary to law. It directed the Commission to replace this permissive standard with more specific allocation formulas. As part of that directive, the court stated that the Commission could "conclude that no method of allocation **[14]** will effectuate the Congressional goal that all moneys spent by state political committees on those activities permitted in the 1979 amendments be 'hard money' under the FECA" (*Common Cause v. FEC* 1987).

After an arduous rulemaking process and a return to the District Court by Common Cause with a petition for enforcement of the court's order, the Commission issued new soft money rules in 1990, effective January 1, 1991 (FEC 1990). The rules placed no restrictions on the sources or size of contributions to party nonfederal accounts, and they did not limit the amount of such soft money that could be spent. They did require all national party committees to file regular reports of their nonfederal receipts and disbursements with the FEC, and they required state party committees to report their soft money disbursements made in connection with federal elections. The regulations also replaced the "any reasonable basis" standard for allocating the costs of activities that influence both federal and state and local elections with a set of specific allocation methods. They also specified that the method to be used by party committees depended on the type of committee incurring the expense and the type of activity for which expenses were to be allocated.

National party committees were required to allocate a minimum of 65% of their administrative and generic voter drive expenses in presidential election years to their federal accounts, 60% in nonpresidential years. For state and local parties, the allocation of these expenses was determined by

the proportion of federal offices to all offices on the state's general election ballot. This provision produced a large range among the states in the percentage of hard money required, but the average was substantially lower than that applying to the national committees. Joint fundraising expenses for all party committees were allocated based on the amount of federal and nonfederal funds raised. The cost of party communications was allocated according to the relative time or space devoted to federal and nonfederal candidates.

[15] These soft money regulations effectively routinized the raising and spending of soft money by the national parties (Corrado 1997a). The FEC rules gave the parties explicit guidelines on how to spend soft money on activities that benefit federal as well as state and local candidates without risking an enforcement action. They also provided the national parties with ways of increasing the share of their costs that could be paid for with soft money. One such method -- transferring federal and nonfederal funds to state parties to take advantage of more favorable allocation formulas -- would become a major element of national party funding strategy in the years ahead.

B. The 1992 Election

It was no surprise, therefore, to see soft money activity proceed apace in the 1992 election. (Since this was the first election in which soft money contributions and expenditures were reported to the FEC, the soft money figures reported below for the 1992 election cycle and after are based on FEC data.) Spending almost doubled again over the preceding presidential election cycle, from $45 million to $80 million, although this time with the Republicans outpacing the Democrats. (See Table 2 for nominal figures, Table 3 for inflation-adjusted figures.) Soft money as a share of total spending by the national parties jumped five percentage points to 16%. Both parties sought contributions of $200,000 or more from their top donors and put a high

priority on soliciting corporate gifts. Table 4 lists the top 50 soft money contributors in the 1992 election cycle, with donations ranging from $206,207 to $1,374,500. (This table, as well as those reporting comparable data for the 1996 and 2000 election cycles, displays total amounts contributed and breaks those amounts down by party and by the percentage contributed from the organization's treasury.) Three of the four congressional party campaign committees – the Democratic Congressional Campaign Committee (DCCC), the National Republican Campaign Committee (NRCC), and the National Republican Senatorial Committee (NRSC) began to mount serious soft money operations. Together **[16]** they raised more than $20 million in the 1992 election cycle. The fourth – the Democratic Senatorial Campaign Committee (DSCC) – continued to raise soft money only for its building fund (Alexander and Corrado 1995).

The national parties exerted firm control over the ways in which soft money was spent. The primary goal was to support the election of federal, not nonfederal, candidates. Barely $2 million of the $80 million in "nonfederal funds" spent by the national parties in the 1992 elections was contributed directly to state and local candidates. The two national parties transferred almost $15 million to state party committees; each party directed two-thirds of its soft money transfers to ten presidential election battleground states. The bulk of these funds was used to finance voter identification and GOTV phone bank programs, typically according to a plan approved in advance by the national party. These voter mobilization activities benefited state and local as well as federal candidates in the targeted states, and state parties receiving these transfers were also able to use some of the funds to hire party workers, update voter lists, and pay for fundraising expenses. But the primary focus of these efforts orchestrated by the national parties was unmistakably the federal election (Alexander and Corrado 1995).

Another major use of soft money in the 1992 elections was "generic" party advertising. These mostly television ads, run in key states to reinforce the message of the presidential candidates, were financed on the party-building rationale of the FEC's allocation rules for joint federal/nonfederal activities. Around $14 million was expended for this purpose. The ads did not mention the names of the candidates. (The assumption was that only hard money could be used for such candidate-specific ads, as part of the parties' coordinated spending budget.) Instead they urged viewers to "Vote Republican" or "Vote Democratic" or stressed themes articulated in the presidential campaigns (Alexander and Corrado 1995).

[17] By the end of the 1992 election cycle, students of political parties and campaign finance came to recognize that important elements of party financing of federal elections were at variance with the FECA and with the initial rulings of the FEC that allowed the national parties to raise and spend soft money for limited purposes. Congress had sought to keep corporate and union money out of federal elections and to limit the size of individual contributions. Both objectives were undermined, however, by the growing role of soft money, which allowed national party officials and federal officeholders to solicit unlimited contributions and steer them in ways that would benefit their federal election campaigns. Initially, the Commission approved only the use of nonfederal or soft money accounts of the national parties "for the exclusive and limited purpose of influencing the nomination or election of candidates for nonfederal office" (FEC AO 1979-17). Yet later the FEC allocation rules allowed much more generous shares of nonfederal or soft money than could be justified by the state and local campaign activity they financed. Only a trickle of soft money was directly contributed to or spent on behalf of state and local candidates. Some soft money helped state party organizations mobilize support for state and local candidates and expand their staffs and activities. But a major share of

these "nonfederal" funds raised by national parties was spent to influence the outcome of federal elections. Soft money had become primarily a component of federal election financing, not a means of funding state and local election activity (Alexander and Corrado 1995; Sorauf 1992).

C. The 1996 Election Cycle: The Soft Money System Transformed

The accommodative regulatory environment, the failure to index for inflation the FECA limits on contributions to candidates and parties, and competitive pressures in presidential elections combined to increase demand for soft money. Between 1980 and 1992, the parties became more adept at raising nonfederal funds from corporations, unions, and wealthy individuals and directing **[18]** them toward locations and activities that would advance their presidential and congressional tickets (Alexander and Corrado 1995). But no one had yet questioned that there were still limits to what the parties could accomplish with soft money. While soft money was growing in importance, it remained a relatively small part of national party committee budgets. (See Table 2 and Chart 1.)

The increased activity of the national parties during this period was largely accomplished with hard money. The parties adapted well to the new environment of modern campaigning and FECA financing, in important part by becoming repositories of professional expertise and building effective networks linking candidates with donors and consultants (Herrnson 1988). Relatively generous coordinated spending limits gave them license to provide substantial direct assistance in elections, financed by contributions raised under the FECA. It was clear that effective campaigning required a large component of candidate-focused communications. And that, everyone assumed, required hard money.

1. Issue Advocacy

That view changed in the next presidential election cycle, thanks to the audacious move by then President Bill Clinton and his political consultant, Dick Morris, to finance an ambitious political advertising campaign under the guise of "issue advocacy." Starting in the fall of 1995 and continuing through the middle of 1996, Democratic party committees spent an estimated $34 million on television ads designed to promote Clinton's reelection. While the ads prominently featured the President, none of these costs were charged as coordinated expenditures on behalf of Clinton's campaign. Instead the party paid the entire cost, based on a legal argument never before made: that party communications which did not use explicit words advocating the election or defeat of a federal candidate could be treated like generic party advertising and financed, according to the FEC allocation rules, with a mix of soft and hard money. Such communications were forms of **[19]** issue advocacy, it was argued, and neither subject to the spending limits that apply to presidential candidates accepting public funding, nor wholly subject to the limits on the source and size of contributions to political parties (Green 1999; Corrado 2000).

This argument, and the embrace of issue advocacy as a form of electioneering, had its genesis in *Buckley*. In that decision, the Court established an express advocacy test as a way of narrowing the scope of disclosure requirements and contribution limits for independent expenditures in light of a concern that the language crafted by Congress in the 1974 amendments to FECA was unconstitutionally vague and overbroad (Potter 1997a). The standard was defined by the Court as communications that "in express terms advocate the election or defeat of a clearly identified candidate for federal office." The Court elaborated in a footnote examples of express advocacy, which became known as the "magic words" test.

This express advocacy standard was constructed to determine which communications by individuals and groups

independent of any candidate or party would be subject to regulation. The Court did not require express advocacy in candidate and political party ads for their financing to be subject to federal campaign finance laws. *Buckley* stated that spending by candidates and political committees (including parties) is "by definition, campaign-related." Students of campaign finance thought it an extraordinary leap for a presidential candidate, especially one accepting public funding, and a national political party to argue that the express advocacy standard gave them license to craft and broadcast unlimited political ads and to finance them in large part with soft money (Green 1999; Corrado 2000; Citizens Research Foundation 1997; Mann 1999).

2. Parties, Issue Advocacy and Soft Money

The express advocacy standard had little noticeable effect on the conduct and financing of federal campaigns for almost 20 years after it was set by the Court. It took the creativity and **[20]** bravado of Morris and Clinton and the failure of the FEC to challenge their use of party soft money to finance television ads promoting the President's agenda and accomplishments to open the flood gates (Corrado 2000). In May of 1996, the Republican National Committee announced a $20 million "issue advocacy" advertising campaign. Its purpose, in the words of the chairman, would be "to show the differences between Dole and Clinton and between Republicans and Democrats on the issues facing our country, so we can engage full-time in one of the most consequential elections in our history" (Corrado 2000). These presidential candidate-specific ads, like the Democratic ones, were targeted on key battleground states and financed with a mix of hard and (mostly) soft money. Both parties were now financing a significant part of the campaigns of their presidential candidates outside of the strictures of the FECA and well beyond the bounds of the 1979 FEC ruling that national parties may raise corporate and union funds and solicit unlimited donations from individuals

"for the exclusive and limited purpose of influencing the nomination or election of candidates for nonfederal office."

Very quickly the parties began to use the same funding strategy to campaign on behalf of their congressional candidates; outside groups did likewise (Green 1999; Corrado 2000). For groups, the advantage of electioneering through "issue advocacy" rather than through FECA "independent expenditures" was that the former could be conducted without disclosure and could be financed with soft (i.e. unregulated) rather than hard money. This meant that both political parties and groups could solicit contributions from corporations and unions as well as from wealthy individual donors to finance candidate-specific electioneering communications. Moreover, those same corporations and labor unions could tap their own treasuries to run such electioneering communications themselves or through convenient, largely anonymous intermediary organizations. Research on the 1996 election revealed extensive and elaborate efforts by parties, candidates, **[21]** unions, corporations and groups to exploit this new issue advocacy loophole to avoid the strictures of federal election law (Annenberg Public Policy Center 1997; Green 1999; Corrado 2000).

This research also suggested some degree of coordination among parties, groups and candidates in creating and broadcasting these issue advocacy electioneering communications. Published accounts by former White House insiders and the report of the Senate Committee that investigated campaign finance practices in the 1996 election contain detailed information about President Clinton's personal role in authorizing the "issue ad" campaign, editing the ads, selecting locations for their broadcast, and raising the funds needed to pay for them (Morris 1997; U.S. Senate Committee on Governmental Affairs 1998). Similar reports have been made of possible coordination between parties and outside groups regarding

the strategic use of issue advocacy electioneering communications to shape the outcome of federal elections (AFL-CIO v. Federal Election Commission 2001). The Supreme Court's distinction between independent advocacy and advocacy coordinated with a candidate was critical to its finding that limits on independent expenditures were unconstitutional. Yet as issue advocacy emerged as a tool for electioneering communication in the 1996 election, it threatened to undermine a central feature of the FECA: that communications designed to help a candidate but not treated as contributions must be made independent of that candidate.

3. Demand for Soft Money Intensifies

The increased demand created by this novel interpretation of nonfederal election activity led to more than a threefold increase in national party soft money activity between 1992 and 1996 – from $80 million to $272 million. (See Table 2.) Soft money as a share of total national party spending jumped from 16% to 30%. Both parties and their elected officials worked hard to solicit soft money donations from corporations, wealthy individuals, and labor unions. During the 1996 **[22]** election the national party committees received nearly 1,000 contributions from individuals in excess of $20,000 (the annual federal party contribution limit) and approximately 27,000 contributions from federally prohibited sources (Corrado 2000). Table 5 contains the top 50 soft money donors in the 1996 election cycle; their contributions ranged from $530,000 to $3,287,175.

Less than $10 million of the $272 million was contributed directly to state and local candidates in the 1996 cycle, only 3.5% of the soft money spent by the parties. The two parties transferred a total of $115 million in soft money to state party committees, which financed two-thirds of state party soft money expenditures. The national Democratic party managed to finance two-thirds of its pro-Clinton "issue ad" television blitz by taking advantage of the more favorable allocation methods available to state parties. They

simply transferred the requisite mix of hard and soft dollars to party committees in the states they targeted and had the state committees place the ads. State party soft money expenditures for political communication/advertising jumped from less than $2 million in 1992 to $65 million in 1996 (La Raja 2001). State parties enjoyed positive spillover effects from this national party campaign strategy, in terms of covering some of their staffing and administrative costs. But there is no doubt that they were used by national party officials as vehicles for implementing their newly-developed strategy of federal electioneering under the guise of issue advocacy (Green 1999; Corrado 2000).

After the 1996 election, the FEC audit division concluded that the party issue advertising campaigns should have been treated as campaign expenses of the two presidential candidates and thereby subject to spending and contribution limits. The Commission rejected the finding and unanimously declined to take any punitive action against the parties or their presidential candidates. The Commission also rejected the general counsel's recommendation for an enforcement proceeding, based on the conclusion that the party's issue ads were coordinated with the Clinton **[23]** campaign and therefore constituted illegal campaign contributions and expenditures (Corrado 2002). What had seemed a daring test (if not outright violation) of the boundaries of federal election law in 1996 had now received the de facto blessing of the Federal Election Commission. There remained few effective constraints on the ability of parties and other political actors to campaign for and against specific candidates for federal office with unlimited amounts of soft money.

D. The 1998 and 2000 Elections: A Regulatory Regime in Disarray

The 1998 midterm election cycle saw the parties focus their soft money strategy on Senate and House elections. The total amount of soft money spent -- $221

million -- was less than in 1996 but more than double the previous midterm election. And soft money as a share of total spending by the national parties jumped to 34%. (See Table 2.) The congressional party campaign committees put a premium on raising and spending soft money to advance the election prospects of their candidates. The two Senate campaign committees effectively abandoned formal coordinated expenditures on behalf of their candidates and delegated this financing tool to state parties. The DSCC made $12.3 million in coordinated expenditures in the 1994 midterm elections; that amount dropped to $8,424 in 1998. The NRSC spent $10.9 million of hard money in coordination with their candidates in 1994; the comparable amount in 1998 was $36,775. Both national party committees had discovered they could finance campaign activity on behalf of their senatorial candidates with soft money in the form of "issue advocacy." The same pattern, more pronounced with the Democrats than the Republicans, was evident in the House campaign committees (FEC 1999).

This was also the first election cycle in which scholars systematically monitored the issue advocacy campaigns of parties and groups, on television and on the ground (Krasno and Seltz 2000; **[24]** Magleby 2000, 2000a; Krasno and Goldstein 2002). Anecdotal evidence had previously suggested little difference in purpose and content between express advocacy and candidate-specific issue advocacy communications financed by parties and groups. This research by political scientists soon confirmed that suspicion. The evidence of the explicit electioneering purpose of candidate-specific issue advocacy near the election was overwhelming. Such electioneering issue ads run by parties and groups were largely indistinguishable from the campaign ads of candidates. Very few candidate ads used words of express advocacy; virtually all party issue ads mentioned the name of a federal candidate, mostly in an attack mode, but few mentioned the name of the party; and almost every issue ad featuring the name of a candidate and

running near an election was clearly designed to support or attack a candidate, not to express a view on an issue. Voters were unable to differentiate candidate-specific issue ads (broadcast and print) sponsored by parties and outside groups from campaign ads run by candidates. Parties and outside groups used issue advocacy as a cover to finance campaigns for and against federal candidates in targeted races.

Given the breakthrough in the use of soft money to fund candidate-focused campaign ads in 1996, the FEC's decision not to pursue this apparent violation of law and regulation, and the emergence of issue advocacy as the campaign weapon of choice in the 1998 congressional elections, it is no surprise that soft money financing of party campaigning exploded in the 2000 election cycle. Soft money spending by the national parties reached $498 million, now 42% of their total spending. (See Table 2.)

Raising a half billion dollars in soft money took a major effort by the national parties and elected officials, but they had the advantage of focusing their efforts on large donors. That focus paid substantial dividends: 800 donors (435 corporations, unions and other organizations and 365 individuals), each contributing a minimum of $120,000, accounted for almost $300 million or 60 **[25]** percent of the soft money raised by the parties (Rogers 2001). The top 50 soft money donors, displayed in Table 6, each contributed between $955,695 and $5,949,000. Among the many soft money donors who gave generously to both parties were Global Crossing, Enron, and WorldCom (Makinson 2001).

The Republican and Democratic National Committees provided the soft and hard money needed to boost the campaigns of their presidential candidates in key battleground states. Electioneering issue ads were a central component of the political strategies of both presidential candidates and were fully integrated into the campaigns (Magleby 2002; Corrado 2002). One estimate based on monitoring television ads in the 75 largest media markets

between June 1 and election day suggests the parties spent $3 on issue advocacy communications in the presidential campaign for every $1 they spent on express advocacy communications (Holman and McLoughlin 2001). Once again, the transfer of funds to state parties, which then placed the ads, provided the most efficient allocation method.

The House and Senate party campaign committees were especially active in the soft money arena. Together they spent $219 million in 2000, more than ten times their soft money activity in 1992. As in 1998, they largely abandoned the hard money coordinated expenditure route to assisting their candidates and focused their campaign activity on issue advocacy and GOTV, both of which could be financed with a large portion of soft dollars. For the first time, the two Democratic campaign committees actually raised and spent more unrestricted soft money than regulated hard money (FEC 2001; Corrado 2002; Magleby 2002). Research monitoring national party campaign activities in the 2000 election cycle confirms a massive increase in party federal electioneering activities – over the air and on the ground – in targeted states and districts and financed largely with **[26]** soft money (Krasno and Goldstein 2002; Magleby 2002; Magleby 2003; Holman and McLoughlin 2001).

A total of $280 million in soft money – well over half the amount raised by the six national party committees – was transferred to state parties, along with $135 million in hard money. By contrast, the national parties contributed only $19 million directly to state and local candidates, less than 4% of their soft money spending and 1.6% of their total financial activity in 2000 (FEC 2001).

By the end of the 2000 election cycle, it simply was not credible to argue that soft money was exclusively or even primarily being used for state and local election activity. Nor was it credible to argue that "issue ads" run by national and state parties were anything other than communications intended to influence the outcome of federal elections. The

evidence that national parties were raising soft money, not subject to federal limits, and using it by working through state parties to influence federal elections was decisive. The language in *Buckley* that spending by parties is "by definition, campaign-related" was given powerful empirical support. Scholars might differ about how best to change the campaign finance system, but they could not avoid the conclusion that party soft money and electioneering in the guise of issue advocacy had rendered the FECA regime largely ineffectual.

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The targets of influence are less often victories on final roll-call votes than assistance, sympathy or access at some earlier stage of the legislative process (Hall and Waymann 1990).

In any event, this literature is often used to buttress the argument that political contributions do not corrupt the policy process. This is an odd inference, since it is based on studies of contributions that are limited as to source and size for the very purpose of preventing corruption or its appearance. PAC contributions are capped at $5,000 per election, an amount whose real value has shrunk by two-thirds since it was enacted in 1974. Are we to assume that studies of contributions of $50,000 or $500,000 or $5 million from corporations, unions and individuals would produce the same generally negative findings? What if the route of influence is not through individual members or on roll call votes? What if large soft money donors give generously to both political parties?

A more sophisticated understanding of the organizational features of Congress and of the multiple forms of political contributions leads one to take seriously the potentially corrupting effects of political contributions. Initial work along these lines suggests a myriad of ways in which groups receive or are denied favors beyond roll-call votes (Hall and Wayman 1990; Hall 1996; Beckmann and Hall 2002). Members can express public support or opposition in various legislative venues, offer amendments, mobilize support, help place items on or off the agenda, speed or delay action, and provide special access to lobbyists. They can also decline each of these requests. Beyond the chamber floor, venues include rules governing floor consideration, party leadership, party caucuses, standing committees and subcommittees, conference committees, and other collections of members inside the House and Senate. Groups may use their campaign contributions in conjunction with their lobbying operations to reinforce or activate rather than convert

members. They may also try to [*34] curry favor by running helpful electioneering issue advocacy campaigns for or against particular federal candidates. Moreover, in the executive branch, influence can be sought over appointments and access to decision-making forums, as seen in recent revelations about the Enron Corporation.

The currency of campaign contributions extends well beyond PAC contributions to members' campaign committees. These include brokered if not bundled individual contributions, contributions to leadership PACs controlled by members, contributions to parties and candidates in targeted races and informally credited to members, soft-money contributions to parties and section 527 committees connected to members, and direct expenditures on "issue ad" campaigns. The ways and means of potential influence (and corruption) are much more diverse than those investigated in the early scholarly research.

The dramatic growth of soft money and the intimate involvement of elected officials in raising and spending that money to influence federal elections makes that potential influence and corruption all the more serious. That potential for abuse is most vividly illustrated by the series of reports issued by the Center for Responsive Politics tracking patterns of soft money contributions by groups with a strong interest in pending legislation (Keen and Daly 1997; Corrado 2000). Prominent examples include the tobacco, telecommunications, and oil and gas industries. In each case millions of dollars in soft money contributions were made to the national and congressional party committees of both parties as Congress was considering legislation that would significantly affect those industries. These are only several of the most noteworthy examples of a widespread phenomenon: most corporate soft money donors have a major stake in federal policymaking and many contribute to both major parties.

[Mellman-Wirthlin Report]

Research Findings of a Telephone Study Among 1300 Adult Americans

September 23, 2002

Overview of Findings

This study demonstrates that large political contributions to parties are seen by the public to have a significant and detrimental influence on the American political system and the actions of federally elected government representatives. Our principal finding is that the American public believes:

> The views of large contributors to parties improperly influence policy and are given undue weight in determining policy outcomes.

Another significant conclusion is that the American public believes:

> The amount of time federal officials spend raising money for their parties, compromises their ability to do the public's business properly,

The strength of these findings is also important to note. In this study, we saw an unusually high number of 70% or more responses when it came to questions regarding the impact of large contributions to political parties. In public opinion research, it is uncommon to have 70% or more of the public see an issue the same way. When they do, it indicates an unusually strong agreement on that issue. In addition, we asked most core questions in more than one way, to help ensure that responses were not an artifact of question design or wording.

Findings

1) A significant majority of Americans believe that those who make large contributions to political parties have a major impact on the decisions made by federally elected officials. Indeed, many believe the views of these big contributors sometimes carry more weight than do the views of constituents or the best interests of the country.

Over three in four Americans (77%) believe that big contributions to political parties have a great deal of impact (55%) or some impact (23%) on decisions made by the federal government. Just (6%) think that big contributions don't have much or any impact.

How much impact do you think big contributions to political parties have on decisions made by the federal government in Washington, D.C....a great deal of impact, some, not too much, or none at all, or don't you have an opinion on this?

77%	***TOTAL GREAT DEAL/SOME***
55%	*Great deal*
23%	*Some*
6%	***TOTAL NOT TOO MUCH/NONE***
5%	*Not too much*
1%	*None at all*
16%	*Don't have opinion*
0%	*Don't know/Refused*

Nearly 8 in 10 Americans believe that Members of Congress decide how to vote based upon what big contributors to their political party want at least sometimes. Almost half of Americans (45%) believe that this happens often. In contrast, only a quarter of Americans believe members of Congress often decide how to vote based on what they think is best for

the country (25%), or what the majority of people in their district want (24%).

How frequently do you believe members of Congress decide how to vote on issues based on what big contributors to their political party want? Would you say [ROTATE] [often], [sometimes], [rarely] or [never], or don't you have an opinion on this?

45%	*Often*
34%	*Sometimes*
8%	*Rarely*
1%	*Never*
12%	*No opinion*
0%	*Don't know/Refused*

How frequently do you believe members of Congress decide how to vote on issues based on what they think is best for the country? Would you say [ROTATE] [often], [sometimes], [rarely] or [never], or don't you have an opinion on this?

25%	*Often*
52%	*Sometimes*
11%	*Rarely*
2%	*Never*
10%	*No opinion*

How frequently do you believe members of Congress decide how to vote on issues based on what the majority of people in their district want? Would you say [ROTATE] [often], [sometimes], [rarely] or [never], or don't you have an opinion on this?

24%	Often
50%	Sometimes
15%	Rarely
2%	Never
10%	No opinion
0%	Don't know/Refused

When the views of big contributors to political parties run contrary to the views of constituents or what's best for the country, most Americans believe that the will of contributors takes precedence.

Specifically, nearly three quarters (71%) of Americans think that members of Congress sometimes decide how to vote on an issue based on what big contributors to their political party want, even if it's not what most people in their district want, or even if it's not what they think is best for the country (71%).

Do you think members of Congress sometimes decide how to vote on an issue based on what big contributors to their political party want, even if it's not what most people in their districts want, or do you think this doesn't happen, or don't you have an opinion on this?

71%	*Yes, does happen*
7%	*No, doesn't happen*
21%	*No Opinion*
1%	*Don't know/Refused*

Do you think members of Congress sometimes decide how to vote on an issue based on what big contributors to their political party want, even if it's not what they think is best for the country, or do you think this doesn't happen, or don't you have an opinion on this?

71%	*Yes, does happen*
9%	*No, doesn't happen*
20%	*No Opinion*
0%	*Don't know/Refused*

A large majority (84%) think that members of Congress will be more likely to listen to those who give money to their political party in response to their solicitation for large donations.

Members of Congress will be more likely to listen to those who give money to their political party in response to their solicitations for large donations

84%	***TOTAL AGREE***
51%	*Agree Strongly*
33%	*Agree Somewhat*
13%	***TOTAL DISAGREE***
7%	*Disagree Somewhat*
5%	*Disagree Strongly*
3%	*Neither Agree nor Disagree*
0%	*Don't know/Refused*

Over two-thirds of Americans (68%) also think that big contributors to political parties sometimes block decisions by the federal government that could improve people's everyday lives.

Do you think that big contributors to political parties sometimes block decisions by the federal government in Washington, DC that could improve people's everyday lives, or do you think this doesn't happen, or don't you have an opinion on this?

68%	*Yes, does happen*
8%	*No, doesn't happen*
23%	*No Opinion*
1%	*Don't know/Refused*

About four in five Americans think a member of Congress would be likely to give special consideration to the opinion of an individual, issue group, corporation, or labor union who donated $50,000 or more to their political party (81%) or who paid for $50,000 or more worth of political ads on the radio or TV (80%). By contrast, only about one in four Americans (24%) think that a member of Congress is likely to give the opinion of someone like them special consideration. Americans see very little difference between the influence of a soft money donation to a political party and the funding of political ads on television and radio.

If an individual, issue group, corporation, or labor union donated 50,000 dollars or more to the political party of a Member of Congress, how likely would a Member of Congress be to give the contributor's opinion special consideration because of the contribution – would they be very likely, somewhat likely, somewhat unlikely, or very unlikely to consider the contributor's opinion, or don't you have a view on this?

81%	***TOTAL LIKELY***
41%	*Very likely*
41%	*Somewhat likely*
9%	***TOTAL UNLIKELY***
6%	*Somewhat unlikely*
3%	*Very unlikely*
9%	*Don't have opinion*
0%	*Don't know/Refused*

If an individual, issue group, corporation, or labor union paid for 50,000 dollars or more worth of political ads on the radio or TV that benefited a member of Congress, how likely would the Member of Congress be to give their opinion special consideration because of the ads – would they be very likely, somewhat likely, somewhat unlikely, or very unlikely to give them special consideration because of the ads, or don't you have an opinion on this?

80%	***TOTAL LIKELY***
37%	*Very likely*
43%	*Somewhat likely*
10%	***TOTAL UNLIKELY***
5%	*Somewhat unlikely*
5%	*Very unlikely*
9%	*Don't have opinion*
0%	*Don't know/Refused*

How likely is a Member of Congress to give the opinion of someone like you special consideration – would they be very likely, somewhat likely, somewhat unlikely, or very unlikely to give special consideration to the opinion of someone like you, or don't you have a view on this?

69%	**TOTAL LIKELY**
27%	Somewhat likely
42%	Very likely
24%	**TOTAL UNLIKELY**
4%	Somewhat unlikely
20%	Very unlikely
7%	Don't have opinion
0%	Don't know/Refused

Even fewer (27%) believe that members of Congress will do the right thing no matter who has given money to their political party. Similarly, just one in three Americans (34%) believe that the government can be trusted to make fair decisions when so much big money is involved. About one third of Americans (31%) think that large political contributions to political parties have little influence on the decisions that get made in Washington, D.C.

As you may know, current campaign finance laws allow individuals, issue groups, corporations, and labor unions to make contributions of 50,000 dollars or more to political parties, but not directly to candidates. Now I'm going to read you several statements dealing with these contributions to political parties. After I read each statement, please tell me whether you strongly agree, somewhat agree, neither agree nor disagree, somewhat disagree, or strongly disagree. The first/next statement is ... (READ LIST AS NEEDED) {RANDOMIZE}

The government can be trusted to make fair decisions even when so much big money is involved.

62%	***TOTAL DISAGREE***
25%	*Disagree Somewhat*
37%	*Disagree Strongly*
34%	***TOTAL AGREE***
9%	*Agree Strongly*
24%	*Agree Somewhat*
4%	*Neither Agree nor Disagree*
0%	*Don't know/Refused*

Large political contributions to political parties have little influence on the decisions that get made in Washington, D.C.

65%	***TOTAL DISAGREE***
24%	*Disagree Somewhat*
41%	*Disagree Strongly*
31%	***TOTAL AGREE***
11%	*Agree Strongly*
20%	*Agree Somewhat*
3%	*Neither Agree nor Disagree*
1%	*Don't know/Refused*

Members of Congress will do the right thing no matter who has given money to their political party.

68%	***TOTAL DISAGREE***
27%	*Disagree Somewhat*
40%	*Disagree Strongly*
27%	***TOTAL AGREE***
7%	*Agree Strongly*
19%	*Agree Somewhat*
5%	*Neither Agree nor Disagree*
1%	*Don't know/Refused*

DECLARATION OF SIDNEY M. MILKIS

I. Background and Qualifications

1. My name is Sidney M. Milkis. I am the James Hart Professor of Politics, at the University of Virginia. I also have an appointment in the Miller Center of Public Affairs, where I am a Senior Scholar and Co-Director of the American Political Development Program. I received my B.A., with High Honors and election to Phi Beta Kappa, from Muhlenberg College in 1972, and my M.A. and Ph.D. degrees from the University of Pennsylvania in 1975 and 1981.

2. Before coming to the University of Virginia, I taught at Franklin College (1979-1981), DePauw University (1981-1985), and Brandeis University (1985-1999). At Brandeis, my appointment was in the Department of Politics, of which I served as Director of Graduate Studies (1992-1996) and Chair (1996-1999). I have been a visiting professor at Harvard University (1994), and have been invited to teach at Oxford University for the 2003-2004 academic year, as the John M. Olin Visiting Professor of American Government.

[*2] 3. I have written or edited eight books, dealing with American politics and government, including: *The American Presidency: Origins and Development* (Congressional Quarterly, 1999), with Michael Nelson, now in its 3rd edition, which won the Benjamin Franklin Prize for history, politics, and philosophy; The *President and the Parties: the Transformation of the American Party System Since the New Deal* (Oxford University Press, 1993); *Political Parties and Constitutional Government: Remaking American Democracy* (Johns Hopkins University Press, 1999); and *The New Deal and the Triumph of Liberalism*, with Jerome Mileur (University of Massachusetts Press, 2002).

4. I have published more than 30 articles, including: "Programmatic Liberalism and Party Politics: The

New Deal Legacy and the Doctrine of Responsible Party Government," in Jerome Mileur and John Kenneth White, eds., **Challenges to Party Government**, Southern Illinois University Press, 1992; "'Direct" Democracy and Social Justice: The Progressive Party Campaign of 1912," with Daniel Tichenor, *Studies in American Political Development* (Fall, 1994); Remaking Government Institutions in the 1970s: Participatory Democracy and the Triumph of Administrative Politics," prepared for a special issue on the 1970s, *Journal of Policy History*, Spring, 1998; "Localism, Political Parties, and Civic Virtue," in **Dilemmas of Scale in America's Federal Democracy**, in Martha Derthick, ed. (Cambridge University Press, 1998); and, most recently, "The Presidency and Political Parties," in Michael Nelson, ed., *The Presidency and the Political System*, now in its seventh edition (Congressional Quarterly, 2002). My **[*3]** curriculum vitae, which includes my publications during the past ten years, is attached as Exhibit A.

5. In my writing and teaching I have been centrally concerned with the emergence of atwo-party system, the critical role it played in the awakening of American Democracy, and the enduring importance of party politics in maintaining an active and competent citizenry. I drew on this experience as a scholar and writer in preparing this declaration on the Party System and the Bipartisan Campaign Reform Act (BCRA). This declaration examines the relationship between the Political Parties and the American political system, reviews the Political Science literature on political parties, and analyzes the likely effect that the BCRA will have on political parties and the American political system.

6. In preparing this report, I have relied upon my review of the published political science literature relating to political parties and the American political system, my own writings and research relating to political parties and the American political system, interviews with RNC officials, non-party declarations of special interest groups obtained by

the RNC in this case, documents reflecting the establishment of the RNC's non-federal accounts, and the various sources cited herein.

7. I have not testified as an expert at trial or by deposition within the last four years. I am being compensated for my services in connection with this case at the rate of $250 per hour.

[*4] II. Overview

8. Political parties have played a critical role throughout American history in making constitutional government work. Although the Framers' proscribed partisan conflict, fearing that parties might dangerously divide a free country, a party system developed in the early days of the republic that proved to be an essential part of American democracy. Parties were formed during the early part of the nineteenth century as a means of engaging the participation of ordinary citizens, and with localistic foundations that were critical for the maintenance of an engaged citizenry. The party system protected local self-government, yet gave rise to a democratic nationalism – to a federal democracy that balanced the claims of those who celebrated one national community and those who saw the country as many communities. Rooted in the states and localities, the parties drew Americans into debate about the leading issues of the day; moreover, outside of the Civil War, party debate and negotiations helped forge a consensus on controversial matters such as the regulation of the currency and social welfare policy. Most important, the party system has been virtually the only reliable source of collective identity in our rights-based culture. The parties' role in mediating among diverse constituencies, and moderating the influence of extremist forces and groups, has been critical to the success of American democracy.

9. Political Scientists have long recognized the value of the two-party system, defending it in the face of hard challenges posed by progressive reformers during the 20th and 21st centuries. Political scientists have not been unanimous in their [*5] praise of American political parties. For example, advocates of "responsible party government" have called for more centralized, disciplined, and policy-oriented party organizations that might be more effective than traditional decentralized parties have been in carrying out platforms or proposals presented to the people during the course of an election. Nonetheless, mainstream political scientists, whether champions or critics of the two-party system, have overwhelmingly viewed strong party organizations as essential to preserving the health and stability of American democracy. As E.E. Schattschneider, one of the great defenders of political parties wrote, "The political parties created modern democracy and modern democracy is unthinkable save in terms of parties."[i]

10. The Bipartisan Campaign Reform Act (BCRA) will substantially weaken political parties by impeding their ability to finance a range of vital associational activities and by isolating each party unit -- the national, state, and local party committees -- from each other. Moreover, the BCRA will shift power away from political parties toward interest groups, with serious adverse consequences for American democracy. Passed with the objective of making the political process less corrupt, the BCRA actually risks greater corruption by strengthening *pressure groups politics* at the expense of *party politics*.

III. Political Parties and the American Political System

11. Parties are not mentioned in the Constitution, and many of the Founding Fathers hoped to limit or restrict their influence. Indeed, James Madison's famous discussion of "factions" in *Federalist* 10 reveals the Framers' hope that the division and separation of powers, operating within a large

and diverse society, [*6] would transform vital party debate and conflict into muted competition among a multitude of diverse interests. Madison voiced the Framers' fear that democratic values, cultivated by local communities and militant political associations, were but provincial prejudices that threatened to degenerate into anarchy, or worse, majority tyranny. Parties could not be abolished, for they represented rival interests and passions that inevitably were ignited in a free society. Yet, unless the Constitution controlled the *effects* of factionalism, popular government enabled a majority party to "sacrifice to its ruling passion or interest both the public good and the rights of other citizens." Political associations like parties give expression to the popular will and make government responsive to it. At the same time, the division and separation of powers, working in tandem with a multitude of economic and social interests, would frustrate the development of a strong party system, or, as Madison put it, "secure the public good and private rights against the danger " of a majority faction."[ii]

12. Nonetheless, political parties very quickly became central to the work of American democracy – and by the 1830s, parties became part of what Thomas Jefferson called the "living Constitution." Significantly, Madison, the principal architect of a Constitution designed to frustrate partisanship, became a principal defender of parties during the critical battles between the Democratic-Republicans and Federalists of the 1790s. Alexander Hamilton's success as secretary of the Treasury in the Washington Administration led Madison to rethink his understanding of republican government, to acknowledge that the original Constitution tended towards "consolidation," to the centralization of power that [*7] placed government beyond the influence of most citizens. By the early 1790s, he joined Jefferson in opposition to the Federalists (Hamilton's party), and played a leading part in the founding of the Democratic-Republican party. Jefferson and Madison founded the Democratic-Republican Party as a bulwark of local self-government: it stood for

limited government and states' rights; and opposed Hamilton's plan for an executive establishment that would create a large presence for the national government at home and in the world.

13. The Democratic-Republicans' triumph in the Election of 1800, the "Revolution of 1800" as Jefferson called it, dramatically reduced the size of the national government; this critical contest also marked a profound change in American constitutional government. Previously, gentlemen of status *offered themselves* to the voters as candidates. The Democratic-Republican party *asked voters for their support and provided an organization that reached out to them.* Significantly, a party that was committed to collective principles and claimed to represent a majority of the American people drove the unorganized and elitist Federalists from office. Jefferson's "great unconscious achievement," Henry Jones Ford wrote in his classic account of *The Rise and Growth of American Politics*, was "to open constitutional channels of political agitation." By organizing those who opposed the government's policies, change "became possible without destruction." Although, as Jefferson realized, the conflict between the Democratic-Republicans and Federalists resembled a revolution, with the emergence of political parties, a new means evolved for displacing governments from power.[iii]

[*8] 14. The extension of party organization over the country in the early days of the republic actually contributed to national unity. Presiding over the first government that claimed a popular mandate, Jefferson used the occasion of his first inaugural address to remind the people (including the bloodthirsty among his followers), "we are all republicans, we are all federalists." Jefferson's plea for harmony helped secure a peaceful transition of power and cultivated a political climate in which he could establish profound democratic changes without departing from the constitutional framework established by his Federalist predecessors.

15. Jefferson's success as a democratic leader was such that the Democratic-Republican party eventually killed off its Federalist rivals in elections. Federalists resisted the democratic politics that triumphed in the "Revolution of 1800"; in truth, the Jeffersonians were a bit squeamish about democracy too, and made little effort to sustain the vitality of their party. For a time, the U.S. fell into a one party mode of politics that from 1812 to 1820 degenerated into a no-party mode. Never was an era more inappropriately named than the so-called "Era of Good Feelings." The country suffered under fragmented leadership that had no means to build popular support. In the War of 1812, Jefferson's heir apparent, James Madison, fiddled while the British burned the national capital—a fitting symbol for the decline of national government that continued even after the British retreated. After the War of 1812, the nascent democracy awakened during the Jeffersonian era deteriorated: without parties, as Morton Keller's declaration in this case shows, voting declined, to the point that turnouts of two to three percent **[*9]** of the eligible voters were not uncommon in state and local elections in Virginia, Maryland, and Massachusetts.

16. The controversial presidential election of 1824 put an end to the Era of Good Feelings and led to the general acceptance and consolidation of the *party system*. During the Jeffersonian era, the national party structure was centered in the Congressional Caucus, which left the selection of presidential candidates and the development of policy programs to the Democratic-Republican membership in Congress. But the party machinery had run down badly by 1824, and its support was no longer tantamount to election. Four major candidates ran for the presidency, each representing the aspirations of a sectional constituency. The presidential choice of the forlorn Democratic-Republican caucus, William Crawford of Georgia, finished third in the electoral college behind Andrew Jackson of Tennessee and John Quincy Adams of Massachusetts (the son of John Adams), both of whom had been nominated by their state

legislatures. The powerful Speaker of the House, Henry Clay, came in fourth. Party politics had been displaced by narrow factionalism. No candidate had enough support to gain a majority of electoral votes, throwing the election to the House of Representatives.

17. The outcome of the 1824 election, in which the House selected Adams, even though Jackson had more popular and electoral votes, persuaded Jacksonian reformers that the Constitution's failure to cultivate an active and competent citizenry had not been remedied by Jeffersonian democracy. As Clay had not finished among the top three, he was, as the Constitution stipulated, removed **[*10]** from the competition. But the Speaker still exercised considerable influence with his fellow representatives, and he used that authority to help secure Adams's election. The new president rewarded the Speaker by naming him Secretary of State, the traditional stepping-stone to the presidency, thus virtually anointing Clay his successor. Adams and Clay, and their supporters in the House, acted within the law, but their indifference to Jackson's grass roots support confirmed how the Era of Good Feelings – the absence of partisan organization and competition – insulated the federal government from the popular sentiments in the states and localities.

18. Not surprisingly, Jackson responded vociferously and with hostility to the outcome in the House, declaring that Adams and Clay had connived to "conclude a corrupt bargain." Although no evidence exists that an unsavory agreement was struck, the House's willingness to disregard the popular will led to reforms that made elections and governing institutions work more democratically. Jackson's political supporters considered the renewal of partisanship as an essential ingredient of this reform. With the decline of party competition, Martin Van Buren, a Jackson ally, lamented a system of personal factions and virulent

sectionalism that displaced the "common sentiment" that had supported public accountability.

19. The "disease" of nonpartisanship yielded a fragmented and apathetic electorate (only 24% of the eligible electorate voted in 1824), allowing the House to select Adams. In the chaos of a partyless nation, divisions among the majority had led to a minority victory. Moreover, the House's selection of Adams portended **[*11]** important consequences for government. His State of the Union address, proposing an active role for the national government in the economy and society, showed that he shared some of the elitist tendencies of his father. Adams' entire presidency was marred by his lack of organizational or popular support. His aggressive push for a revival of Federalist heresies led democratic reformers to ask how federalism and self-rule could be protected while national unity was preserved. Their answer was a two-party system, which would guarantee, within the framework of the Constitution, that the will of the majority, and its policy commitments, would always triumph.

20. The failures of American government in the nonpartisan era thus encouraged a movement to make political parties a permanent part of constitutional government – Jacksonian democracy arose out of these party-building efforts. The Jeffersonians had merely tolerated the Democratic-Republican party as a temporary agent to advance a doctrine of local self-government; by the 1830s, Jacksonians were defending political parties, indeed, a party *system*, as an indispensable institution of constitutional government. Although Jackson's political enemies argued that a formal party system would threaten the original constitutional design, his supporters argued that mass political associations like parties could cultivate a strong attachment between the people and fundamental law. As one Jacksonian newspaper put it, "[Political parties] are the schools of political science, and no principle can be safely incorporated into the fabric of national

law until it has been digested, limited, and defined by the earnest discussions of contending parties."[iv]

[*12] 21. Constitutional doctrine was joined to the art of association; the Jacksonian ambition to make partisanship part of the "living Constitution" was embodied in the Democratic party, which organized voters on the basis of principles that were militantly decentralizing, as was the very process of party politics they established. With the collapse of the Congressional Caucus ("King Caucus" was condemned after the debacle of 1824), presidential tickets and party platforms were nominated by national conventions. National convention delegates were selected by conventions in the states, which consisted in turn of local party members. Implicit in this idea of the national convention was that the delegates sprang directly from the rank and file, as Jackson put it, "fresh from the people." The Jacksonians staffed this elaborate organization with the patronage, or "spoils system," which implanted a system of rotation into government personnel practices; the party that won federal or state and local elections had the opportunity to fill government appointments with their loyal partisans. In New York Senator William L. Marcy's famous words, the credo of the new patronage system was "to the victors belong the spoils of the enemy." The convention and patronage systems formed an elaborate organization that reached far beyond the halls of Congress and eventually penetrated every corner of the Union.

22. Jackson's enemies, the Whigs, led by Adams and Clay, and dedicated to expanding the economic and social responsibilities of the government, at first resisted participating in, and supporting, a mass party system. But the success of the Jackonian Democrats persuaded the Whig opposition that they had no recourse but to accept popular partisan campaigns and practices so as to avoid the **[*13]** fate of the Federalists. The Whig candidate William Henry Harrison's famous Log Cabin, Hard Cider campaign of 1840 signified that parties had become an enduring, integral part of

constitutional government in the United States. Electoral turnout increased substantially: the 2.4 million voters who cast their ballots in 1840 constituted 80% of the eligible electorate. What's more the emergence of a competitive two party system encouraged an expansion of the electorate, so that universal white manhood suffrage was achieved. Jacksonian democracy was limited to be sure; African-Americans and women had no place in it. Nonetheless, the emergence of mass party politics gave rise to a more democratic form of constitutional democracy that provided not only immigrant groups, but also women and African-Americans with justification to claim their right to participate in politics.

23. Once allied to the Constitution, political parties played *four* critical roles in maintaining it:

(a) With organizations and practices that were highly decentralized, political parties ensured that national campaigns and controversies focused on the partisan activities of townships, wards and cities, thus cultivating a delicate balance between local and national community. The localistic foundations of parties were critical for the maintenance of an active citizenry; thorough partisan campaigns and the patronage system, *local self-government*, the bedrock of American democracy, was invigorated. As the historian, Robert Wiebe has written, "The driving force behind nineteenth century democracy was thousands of people spurring thousands **[*14]** of other people to act. Many little favors, many personal connections, wound a host of little springs to make the mechanism work."[v] Political parties sustained local self-government through nationalizing experiences like the Civil War and the New Deal. "Many factors have influenced the historical development of federalism," states a 1986 report of the Advisory Commission of Intergovernmental Relations. "Among the most important of these was the decentralized, non-disciplined party which, the historical record suggests, had a significant decentralizing influence on intergovernmental relations by providing an often

powerful institutional link between local, state, and national offices."[vi]

(b) Even as they sustained local self-government, political parties cultivated a set of beliefs and practices that gave rise to a spirited, but circumspect idea of *democratic nationalism*. Especially through the quadrennial conventions and presidential elections, the two-party system engaged citizens in debates and elections over national controversies.

• The Democrats and Whigs, for example, aroused the country to debate and resolution over the National Bank. When Jackson vetoed the bill to re-charter the National Bank prior to the 1832 election, he laid the controversy before the American people, asking them in his veto message to uphold his action by reelecting him, and returning his party to power. Henry Clay, the Whigs' nominee for president, welcomed Jackson's call for a referendum on the Bank fight, believing that the president's veto would cause **[*15]** Democrats from commercial states, such as Pennsylvania and New York, to abandon him. Instead, the contest between Jackson and Clay, fought through elaborate organizations that saturated the country, became a national partisan contest that appeared to uphold Jackson's veto of the bank bill. Jackson's popularity and his energetic concept of presidential leadership helped focus the country's attention on the bank controversy. But his popularity was joined to a collective enterprise, to the work of numerous party leaders in the state and the localities. The task of local partisans in both parties was to keep Democrats and Whigs working together effectively, understanding the stakes of the bank fight, and moving them to the polls. As Joel Silbey, a preeminent historian of the early party system, has written, the battle ultimately was joined "in the mountains of pamphlets issued, editorials written, fliers distributed, and speeches made, all constituting the basic coin of the realm of campaign activity—an exhaustive and repetitive enterprise."[vii] In the end, this exhaustive partisan work yielded a popular mandate.

Jackson's overwhelming defeat of Clay convinced even his political opponents, the Whig weekly, *Niles' Register* reluctantly reported after the election, "that when the president cast himself upon the support of the people against the acts of both houses of Congress," he had been "fully **[*16]** maintained."[viii] Jackson's partisan triumph transformed the Democratic doctrine of states' rights into a *national* creed.

• Lincoln and the Republicans drew the country into a national debate on slavery in 1860. The 1860 Republican convention came together not just to celebrate Lincoln's pioneering virtues as the "Rail-Splitter"; the delegates mixed image crafting with a serious debate over whether the Declaration of Independence, not the Constitution, was truly, as Lincoln argued, the nation's founding document. While the platform was under discussion. Joshua Giddings, the old stalwart of the Ohio underground railroad, offered an amendment that would add the words of the Declaration to the platform. The delegates voted the Giddings' proposal down the first time, but reconsidered when the revered opponent of slavery threatened to walk out of the convention hall. The principles of the Declaration became part of the Republican platform and were sanctified by the delegates as "essential to the preservation of our republican institutions." In this way, Lincoln and the Republican party drew the country into a great contest of opinion over the future of slavery in the country. Lincoln interpreted the Republicans' victory over Stephen Douglas and the Democrats as a mandate to stand firm on preventing the expansion of slavery. Lincoln's refusal to compromise on this issue, a position no Republican congressman dared to oppose, made it **[*17]** impossible for the parties to reach an agreement that might prevent Civil War. But the 1860 election helped give purpose to the Union cause, which Lincoln famously testified to in his Gettysburg Address.

• Just as the 1860 Republican platform included the Declaration of Independence, so the 1936

Democratic platform, which Franklin D. Roosevelt championed, was written as a pastiche of the Declaration, emphasizing the need for a fundamental reconsideration of rights. As the platform claimed with respect to the 1935 Social Security Act: "We hold this truth to be self-evident—that government in a modern civilization has certain inescapable obligations to its citizens, among which is the responsibility to erect a structure of economic security for [its] people, making sure that this benefit shall keep faith with the ever increasing capacity of America to provide a high standard of living for all its citizens." The Republican platform contested this novel view of rights, declaring, "America was in peril" and calling for the "preservation of … political liberty, which "for the first time" was "threatened by government itself." The immense Democratic triumph of 1936 appeared to sanction the New Deal Democratic party's redefinition of the social contract, confirming the status of programs like Social Security as entitlements.

[*18] • American political parties, therefore, have not been merely loose coalitions of state and local organizations. Although their organizations have been decentralized, the two parties have orchestrated national campaigns; and their representatives in Congress have tended to moderate sectional or local interests in supporting national policies. As a result, the Democratic and Republican parties developed as *national*, but not *centralized* organizations: they celebrated a Whitmanesque idea of national community that complemented a deep and abiding respect for localized politics and government. Even as the polity became more centralized after the 1930s, parties continued to be vital, and all the more important, organizations in maintaining America's federal democracy. In a large, complex political system, parties still have an important role in educating the public about their positions and accomplishments, and in helping to build popular support for their programs. During the past two decades, the Democratic and Republican parties have helped clarify the terms of debate over such issues as

health care reform, budgetary policy, abortion, and environmental protection. As Nelson Polsby and Aaron Wildavsky have written in the 10th edition of *Presidential Elections*, party identification provides citizens "with important guidance in learning about the issues that interest them as well as the many matters on which they cannot possibly be well informed. All of us, **[*19]** including full-time participants such as the president and other leading politicians, have to find a way to cut information costs on some issues. For most of the millions who vote, identification with one of the two major political parties performs that indispensable function most of the time."[ix]

(c) As national organizations that facilitated collaboration among federal, state, and local organizations, parties have been critical agents of *consensus* in the United States. Unlike parties in Western Europe, Great Britain, and Japan, political parties in the United States have never been highly centralized and doctrinaire. Instead, they have been national organizations that conformed to the looser genius of American democratic life. Democratic and Republican parties have been dedicated to obtaining majority support, but have done so by building diverse and decentralized coalitions. Even as they have been principled organizations, Democrats and Republicans have had to accommodate a diversity of interests that has made the creation of religious, racial, or class parties all but impractical in the United States. In this way, parties have helped Americans reconcile their ostensibly contradictory beliefs in majority rule and minority rights.

(d) Finally, parties have been the most important institutions to cultivate a sense of *community*, of *collective responsibility*, in a political culture principally dedicated to individualism, privacy, and rights. It is no accident that when parties have been weak, sectional and interest group politics have dominated the national and state capitals; similarly, the **[*20]** absence of strong parties has attenuated the link between

the government and voters, leading to a decline in public trust and turnout in elections.

- The reform assault on parties during the Progressive era contributed to decline in voter turnout and the growing influence of advocacy groups such as the Anti-Saloon League, which championed Prohibition, and the Immigration Restriction League, which played an important part in the enactment of restrictive immigration laws during the 1920s. Although Prohibition and Immigration restriction emerged around the turn of the century with social reform dimensions, during and after the First World War, the darker implications of these causes came to the fore. Prohibition came to be identified with anti-Catholicism, as well as small town native hostility toward foreign filled cities. Immigration restriction was fueled by anti-Semitism and xenophobia.[x]

- Similarly, reforms in the 1970s that restricted the role of parties in nominating presidential candidates and financing campaigns made more difficult the tasks of building broad coalitions and drawing voters to the polls. The weakening of party organizations corresponded to an advocacy explosion, in which self-styled public interest groups, such as Common Cause, Ralph Nader's Public Citizen, and the National Resources Defense Council, exercised considerable influence by taking their causes before administrative **[*21]** agencies and courts. As the political scientists Benjamin Ginsberg and Martin Shefter have argued, the advocacy explosion of the 1970s led to a decline of voter turnout because public interest groups viewed "bureaucratic warfare" as a "substitute for party building." Although the causes these groups championed, such as a clean environment, consumer protection, and equal rights for African-Americans and women, were often popular, the decline of parties left the political process vulnerable to policy advocates on the left and right who were unrepresentative. As the political scientist, Morris Fiorina has written recently, the "dark side" of

advocacy politics is that it tends to put politics into the hands of "extreme voices in the larger political debate."[xi]

- The role of parties in giving meaning to citizenship suggests why campaign finance reforms and other measures that weaken parties threaten the vitality of the Constitution. Just as political parties were formed to make constitutional government in the United States safe for democracy—to remedy the Constitution's insufficient attention to an active and competent citizenry—so the weakening of political parties has exposed the fragile sense of citizenship in American political life.

IV. Political Parties and Political Science

24. Because they moderate the natural tendency of Americans to celebrate individualism and privacy, party organizations always have had an uneasy **[*22]** standing in the United States. Especially in the 20th and 21st centuries, they have been the bane of journalists, social reformers, and insurgent politicians who have attacked them for corrupting, or "appearing" to corrupt American democracy. Consequently, voters have tended to view parties skeptically, and sometimes with hostility, even as most citizens have found them to be essential guideposts for navigating the complexities of American constitutional democracy.[xii] There has emerged since the early part of the 20th century, an idea of *progressive democracy* that champions "pure democracy," a *direct* relationship between government and public opinion. The influential progressive reformer Herbert Croly, founder of the *New Republic*, gave voice to an antipartisan sentiment that would echo throughout modern American history: "The two-party system, like other forms of representative democracy, proposes to accomplish for the people a fundamental political task which they ought to accomplish for themselves." Champions of *progressive democracy* have pushed reforms, such as the direct primary, civil service reform, registration laws, the regulation of campaign finance, and policymaking

by initiatives and referenda, that have weakened party organizations.

25. In the face of this reform assault, Political Scientists have become the leading defenders of parties, and the fragile but indispensable role these political associations play in American political life. Benjamin Barber, a political theorist, and self-proclaimed communitarian, is almost singular in his rejection of political parties, viewing them as obstructing genuine, i.e., direct, citizen participation in the political community.[xiii] Most political scientists have taken a more practical **[*23]** position, defending parties as critical intermediaries between private and public interests. The vital connection parties forged between government and citizens made Woodrow Wilson, himself a leading reformer, reluctant to join the progressive attack on political parties. "Students of our politics," he warned, "have not always sufficiently recognized the extraordinary part political parties have played in making a national life which might otherwise have been loose and diverse almost to the point of being inorganic a thing of definite coherence and common purpose." National parties had played an indispensable part in forging a country out of America's local communities and national interests, even as these organizations recognized the legitimacy of provincial concerns: "It has been nothing less than a marvel how the network of parties has taken up and broken the restless strain of contest and jealousy, like an invisible network of kindly oil upon the disordered waters of the sea. It is in this vital sense that our national parties have been our veritable body politics."[xiv]

26. Early defenders of the party system did not deny their shortcomings. Wilson acknowledged that parties, outside of episodic national political battles, tended to be provincial and too dependent on the "spoils" of office. But the deficiencies of parties followed not from any inherent fault of partisanship but, rather, from the complexity of America's political institutions and the diversity of its society. Wilson's

protégé, Henry Jones Ford, offered the most vigorous defense of political parties in *The Rise and Growth of American Politics*, viewing them as indispensable institutions in making constitutional government work. Bridging the separation of powers, counteracting localism, making nominations for the myriad **[*24]** of elected offices created by America's federal democracy – all these tasks were "forced" on American parties by the constitutional system. These constitutional responsibilities created the need for huge and elaborate organizations, and the need for large-scale financial backing. Since no method existed for obtaining the funds officially, parties were forced to support themselves by patronage, which sometimes, Ford conceded, led to graft. Nonetheless, Ford insisted that parties were intrinsically *public* associations that made corruption less likely. Indeed, partisanship and corruption were "antagonistic principles": "Partisanship tends to establish a connection based on an avowed public obligation, while corruption consults private and individual interests which secret themselves from view and avoid accountability." The only hope for removing corruption from American politics, Ford argued, was to strengthen party organizations and their influence on government. Ford denied that the efforts of strong party leaders who presided over state politics at the end of the nineteenth century corrupted politics in their effort to "systematize relations" between interest groups and their organizations. He argued, for example, that drawing business interests into partisan coalitions "marked improvement in legislative behavior": "In proportion as party control is strengthened, a counteracting force is brought to bear." With resources to influence elections and public policy, Democratic and Republican organizations would be "in a position to interpose a party obligation between legislative marauders and their prey."[xv]

27. The *collective responsibility* of parties went beyond ameliorating corruption. More important, the art of partisan association was necessary to counteract the **[*25]** powerful attractions of family and commercial pursuits.

Without parties, the political science literature warns, citizens will tend to withdraw into their private lives; even if they were not so inclined, most Americans would not have the time, resources, or, most critically, organizational power to participate in politics effectively. Consequently, the result of weakening parties is not likely to be a more "participatory democracy"; instead, the outcome will be a polity dominated by interest and advocacy groups. Interest groups have always had an important place in American politics and government. But the growth of big government amid the development of a complex commercial society since the early part of the twentieth century has greatly increased the influence of interest groups that push government to enact policies that benefit small constituencies at the expense of the general public.

28. As E.E. Schattschneider, a leading scholar of the political process, wrote in 1960, "American politics provides the raw materials for testing the organizational assumptions of two contrasting politics, *pressure politics* and *party politics*." Pressure politics is essentially the politics of small groups, which have a direct influence on public officials and politics. Even relatively large groups, Schattschneider observed, such as the National Association of Manufacturers, will represent but a small part of the business interests they purport to serve. Only parties appeal to "diffuse interests," counteracting the influence of groups that cannot claim to represent the public. Party politics emphasized elections – and in that quintessential public arena, the Republicans and Democrats could not be captured by special interests. Indeed, interest groups on their own did not have the **[*26]** resources "to play in the great arena for the highest stakes." So long as special interests valued elections, they would have no recourse but to support the public principles and general platforms the parties championed. "It is a great achievement of American democracy," Schattaschneider argued, that business "has been forced to compete for power in the widest arena in the political system... *[T]he power of the Republican party to*

make terms with business rests on the fact that business cannot afford to be isolated." Similarly, the Democratic party was no slave to organized labor; in truth, labor had no recourse but to support the Democrats: "As long as it thinks that elections are important, it must support the Democratic party generally. The facts of political life are that neither business or labor is able to win elections by itself."

29. Schattschneider's greatest concern was the privileged position of business and labor in 20th century American politics, but he feared that so-called citizen groups also would limit political participation to a small circle of program activists. "Only a chemical trace" of African-Americans belonged to the National Association for the Advancement of Colored People; similarly, very few women belonged to the League of Women Voters and a tiny percentage of consumers belonged to the Consumers League. "The competing claims of pressure groups and political parties for the loyalty of the American public," Schattschneider insisted, "revolve about the difference between the results likely to be achieved by small scale and large-scale political organization." By a wide margin, the party system was the "largest mobilization of people in the country": "The parties lack **[*27]** many of the qualities of smaller organizations, but they have one overwhelming asset on their own. *They are the only organizations that can win elections.*"[xvi]

30. Schattschneider's warnings about pressure politics struck political scientists as prescient during the 1960s and 1970s. From the perspective of many political scientists, the consequences of political reforms and other developments that weakened the party system in that era were devastating: a decline in voting turnout; a startling drop in people's trust in government, and the explosion of advocacy politics that weakened the presidency and fragmented Congress. Viewing this fractious state of American politics as a recrudescence of the misnamed "Era of Good Feelings," Walter Dean Burnham, the most distinguished scholar of parties of his generation,

departed from his painstaking analysis on the long secular decline of parties long enough to champion their renewal: "To state the matter with utmost simplicity: political parties, with all their well-known human and structural shortcomings, are the only devices thus far invented by the wit of Western man which with some effectiveness can generate countervailing collective power on behalf of the many individually powerless against the relatively few who are individually – or organizationally – powerful."[xvii]

31. Although most political scientists have defended parties, they have not spoken with one voice. Since the Progressive era, they have been divided between two approaches: advocates of "responsible party government" (represented by scholars such as Schattschneider); and defenders of indigenous institutions (represented by scholars such as Pendleton Herring[xviii]). The former have leveled criticism at the two party system, arguing that it should become more like those **[*28]** elsewhere – more centralized and programmatic – in light of the immense changes in American society wrought by the industrial revolution and world affairs. The latter have defended the traditional parties, citing especially the way they accommodate, even as they strengthen, the institutional arrangements of the Constitution and the principles embodied therein. Significantly, both of these schools defend partisanship; neither believes that the progressive assault on party organizations during the twentieth century will serve American democracy well.

32. Although the "indigenous" school has more than held its own, advocates of responsible parties and national developments have combined to effect important changes in the two-party system. Since the New Deal, its center of gravity has been the nation, rather than states and localities; and both Democrats and Republicans have become more unified and programmatic. Civil Service reform, which has caused parties to rely more on ideological compatibility than the spoils of office in recruiting supporters, has

intensified the move to a more national and ideologically combative two-party system. The more centralized and programmatic party system has come under criticism for suppressing, rather than registering the diversity of the nation. But, arguably, it has undergone a transformation that has better suited the Republicans and Democrats to fulfill their responsibilities in an age when the national government is expected to assume expansive responsibilities at home and in the world. To put it another way, the contemporary parties are still *national*, and not *federal*, in their organization, even though the principal actors and most of the resources are now in Washington rather than the states and localities. Consequently, even in the era of big (or bigger **[*29]** government), parties still perform the responsibilities marked out for them in the 1830s: linking a large complex government with a private regarding and rights conscious citizenry. As the bipartisan association of political scientists and practioners, the Committee for Party Renewal, declared in 1995: "Unlike special interest groups, parties must appeal to majorities in the electorate if they are to win; and unlike single candidate organizations, they must win many races if they are to govern. Parties, moreover, give coherence to American politics. We have a constitutional system and a political culture dominated by disunifying forces – separated powers, federalism, pluralism, and individualism. Parties have been a unifying force in this system, cutting across the branches and levels of government as well as across voting blocs to aggregate interests, build coalitions and make democracy possible."[xix]

V. Political Parties and the Bipartisan Campaign Reform Act (BCRA)

33. Since the dawn of the twentieth century, many factors have threatened the indispensable yet fragile place of parties in American politics, including the growth of the mass media and the development of a mass entertainment industry. But these forces would have been far less debilitating were it not for reforms such as the direct primary, registration laws,

and campaign finance reforms. The campaign finance laws of the 1970s -- the Federal Election Campaign Act of 1971 (FECA) and the 1974 amendments that were added to it -- further advanced a reform effort to "purify" politics – to eliminate even the "appearance" of corruption. But these initiatives, in fact, enhanced the role of special interests, attenuated the link between representatives and their constituents, and made **[*30]** political life seem less relevant and more remote from the every day lives of American citizens, thus contributing to the decline of participation in elections.

34. The campaign finance laws strengthened candidate centered campaigns and interest groups at the expense of parties. By limiting the amount of money parties could give to candidates, FECA required candidates to raise more money on their own. The success of candidates thus became dependent on their individual abilities to raise money needed for high media visibility and the construction of a personal organization. Moreover, by limiting the amount of money any individual could contribute, FECA reduced the role of large contributors and at the same time gave incentives for the formation of federal political action committees; FECA also encouraged the creation of unregulated groups that operated entirely outside of the disclosure requirements. Consequently, during the 1970s, the number of Political Action Committees (PACs) exploded.

35. PACs, organizations formed by interest groups for the primary or sole purpose of giving money to candidates, did not begin with the campaign finance laws. Prior to the 1970s, Labor and Business organizations, which were prohibited from making direct contributions to federal campaigns, formed political action committees that allowed them to participate in the political process. But PACs multiplied rapidly after the campaign finance laws restricted the role of parties in funding elections; indeed, FECA specifically legitimized PACs by explicitly granting to both

corporations and labor unions the right to create, administer, and raise funds for their PACs, and to cover all organizational expenses from corporate and union treasuries. From 1974 to 1982 the number of political action **[*31]** committees organized by business and unions more than quadrupled, increasing from 608 to 2,601; in the next six years, PACs of all types (including those unconnected to business and unions) rose to a total of 4,268 in 1988. There were 4328 federal PACs as of March 31, 2002.

36. PACs thus became a rival to political parties in support of candidates but without obligations to govern or to appeal broadly to electorates. Equally important, the growing influence of advocacy groups strengthened the pressure group politics that Schattschneider had proscribed: during the 1970s, advocacy groups exercised power by influencing Congressional committees, administrative agencies, and courts, advancing policies that were not vetted in elections and the legislative process. Some interest groups did generate large rosters of supporters through direct mail solicitations. But these appeals to the public asked not so much for the citizens' votes, time, energy, and ideas as for contributions to fund campaigns waged by policy experts. Consequently, as the political scientist Hugh Heclo has pointed out, with the reform legacy of the 1970s, American society further "politicized itself" and at the same time "depoliticized government leadership."[xx]

37. This development did not surprise anyone who understood and appreciated the role parties had played historically in providing a vital link between citizens and their government. By the late 1970s, that role, and the unhappy consequences of its serious decline, resulted in efforts of party renewal. The 1979 amendments to the campaign finance laws were designed deliberately with the idea of bringing the parties back into the political process. As Robert Tiernan, Chairman of the Federal Election Commission, admitted in testifying on this legislation: **[*32]** "Unfortunately, the FECA

has had, or is perceived to have had, some unforeseen effects on party and grass roots political activity…Changes in the [1974] statute are desperately needed to permit state and local party committees flexibility for vigorous campaign activity." Morley Winograd, President of the Association of State Democratic Chairpersons, echoed Tiernan's concerns, confirming the deleterious effect FECA had on political parties. The collaboration between local, state, and national committees had been weakened, in no small part due to the fear of violating regulations that were difficult to interpret. Local committees, in particular, Winograd reported, were "reluctant to engage in Federal-election related activity": "They generally do not have legal and accounting assistance available, and local committees, therefore, have not chosen to run risks of Federal regulation." State parties, he continued, "felt frozen out of the 1976 Campaign," thus diminishing "the politics of party, the politics of coalition and accommodation, which is our nation's best defense against the divisiveness of special interest politics."[xxi]

38. In response to these concerns, FECA was amended to allow state and local party committees "to purchase without limit, campaign materials used in connection with volunteer activities on behalf of a candidate (such as buttons, bumper stickers, and yard signs)." A similar exemption was created to allow State and local party committees "to engage in certain voter registration and get-out-the-vote activities on behalf of the nominees of such party for President and Vice President."[xxii] It is my understanding that even before the 1979 Amendments, the Republican National Committee had established nonfederal accounts to support **[*33]** state and local candidates and other party building activities – a traditional role for parties prior to FECA. During the 1980s and 1990s, both Republicans and Democrats made use of non-federal contributions, pumping new life into some state and local party organizations. As Ray La Raja's declaration in this case shows, Democratic and Republican state party organizations have gotten stronger

since 1979, becoming more likely to engage in such critical associational activities as conducting polls, providing campaign training, performing campaign research, and recruiting candidates.

39. The Republican and Democratic use of nonfederal funds to reinvigorate state and local party organizations has, therefore, buttressed the *national* character the parties. A. James Reichley, the foremost authority on the history of party organizations, has noted that some national party managers had some initial inclination to couple this growing financial support with even more control of operations. But the Constitutional division between the national and state governments provides state and local parties with powers and resources to resist centralized control. "If they have funds," Reichley wrote in 1992, "no matter at what geographical level they are raised, state and local parties will probably soon exert more independence, and in some cases are already doing so."[xxiii]

40. The enactment of BCRA threatens the reinvigoration of national parties and the revitalization of America's federal democracy. Condemned as "soft money" and viewed as an effort to circumvent campaign finance laws, nonfederal funds have been charged with corrupting or appearing to corrupt the political process. This charge, abetted by expensive campaigns mounted by the Brennan Center and Pew **[*34]** Charitable Trust Foundation, has become received wisdom. As the declaration that Whitfield Ayers prepared for this case shows, however, the public has been largely indifferent to the BCRA. In the midst of the debate on the Hill over this legislation, Americans did not consider "reforming election campaign finance laws" as a high priority for President Bush and Congress. BCRA, in fact, placed dead last on the list of Americans' political concerns, far behind more prepossessing issues as homeland security, the economy, and education. Indeed, even though John McCain made campaign finance reform the centerpiece of his presidential campaign in

2000, the public never considered "soft money" an important election issue. Like many party reforms, the BCRA has support in Congress, the media, and among "public interest" activists, but has scarcely touched politics outside of the capitol beltway.

41. Indeed, there is no evidence that "soft money" has corrupted parties or the political process. To the contrary, by strengthening parties, the use of nonfederal funds almost certainly has made the political process less corrupt and more responsive than it otherwise would have been. As political scientists have been arguing since the end of the nineteenth century, when the national government first sought to regulate partisan activity, party organizations help to reduce the amount of government corruption by linking representatives and interest groups to collective organizations with a past and a future. By the very act of supporting political parties, donors and interest groups must defend their political actions and policy positions publicly and in coordination with a large governing coalition. In this way, as Nelson Polsby has argued, party leaders and organizations can **[*35]** "deflect undo demands on the office holder, substitute with money from other sources money that is withheld or threatened to be withheld by importunate interest groups or individual donors, and assure that donations do not greatly distort the programmatic commitments embodied in party policy."[xxiv] Professor La Raja indicates that there is a wide consensus in political science that interest groups' campaign contributions tend to assist powerful incumbents, whereas political parties support challengers and candidates in closely contested campaigns. This difference between party and interest group disbursements supports Polsby's view that party politics pose a protective layer of decision makers between candidates and donors.

42. Indeed, nonfederal money strengthens parties' ability to act as a critical intermediary between government action, on the one hand, and donors and interest groups, on the

other. It does so by addressing a critical problem in contemporary American democracy: how to energize party building activities and encourage citizen participation in an age when centralized decision making and mass media appeals threaten to dominate political life. National party committees use nonfederal accounts in collaboration with state and local party organizations in a way that strengthens the national character of parties – that makes it possible for parties to penetrate every corner of the Union, recruiting candidates, attracting volunteers, and mobilizing voters.

43. BCRA is thus a remedy for a disease that has been misdiagnosed. More ominously, it will short-circuit the efforts of the past two decades to revitalize **[*36]** political parties and the critical function they play in making American democracy work.

44. I have been asked by counsel to assume that the BCRA will reduce the collaboration among national, state, and local parties that nonfederal funds have facilitated by, among other things, restricting the ability of the national, state, and local committees of the same party to transfer and "swap" funds and restricting joint-fundraising among the national, state, and local committees. Indeed, the BCRA goes so far as to restrict collaboration among different state parties, for example, state parties are prohibited from engaging in joint-fundraising with other state parties in raising so called "Levin Funds" – nonfederal funds that state and local parties may raise, in contributions up to $10,000 per donor, so long as state law allows, for certain "federal election activity."

45. In my opinion, the restrictions on financial collaboration among national, state, and local party committees would diminish the *national* character of party organizations that historically has made them bulwarks of America's federal democracy. The Republican and Democratic National Committees in Washington are not federal parties, but national parties that contribute money and

other campaign support to state and local candidates. The BCRA, therefore, would establish federal standards on campaign finance decisions at the state and local level. More generally, national party organizations will no longer provide a powerful link between national, state, and local offices. The BCRA will sever the link, rendering parties both more *centralized* (as the national committees will be less able to support party-building activities at the state and local levels) *and* more **[*37]** *fragmented* (as cooperation between national, state, and local parties as well as among the state organizations will be restricted).

46. As was the case in the 1970s, the BCRA will weaken *party politics* and strengthen *pressure group* politics. Non-federal funds have served as an important incentive for candidates and interest groups to cooperate with political parties; consequently, these funds have strengthened political parties as intermediary organizations between public officials and special interests. By banning non-federal funds, the BCRA will encourage interest groups to exert influence directly on candidates and public policy.

47. The respected journalist, Thomas B. Edsall, has dubbed the BCRA "PAC Attack II." "Instead of reducing the power wielded by special interest groups in American elections, the [BCRA] reform bill is magnifying that power and making PACs, the *betes noires* of Common Cause and other good government groups, key players in finances once again."[xxv] In fact, the BCRA – and PAC Attack II – may be worse. The new reform legislation treats parties and interest groups unequally: for example, whereas a corporation or labor union can use unregulated funds to engage in issue advocacy, the new reforms will greatly burden political party advocacy. Consequently, political operatives of all ideological persuasions are likely to channel "soft money" to interest groups. Moreover, many political operatives are scrambling to create new organizations in which they can place the "soft money" that had been going to parties. According to Edsall,

some of these groups, such as Progress for America, which has raised millions of dollars that it uses to promote President Bush's policy agenda, are being set up as 510c4 **[*38]** organizations, which do not have to reveal the sources of the money raised or the details of how it is spent.[xxvi] The result, Edsall states, will not only be a more fractious political process, but also a less accountable one: "When soft money was channeled through the parties, laws required full disclosure of both contributors and expenditures. But the new vehicles for this money are almost certain to be more secretive, with little or no obligation to reveal their activities."[xxvii]

48. Indeed, based on my September 20, 2002 interview with Jay Banning, the RNC's Director of Administration and Chief Financial Officer, it is my understanding that the BCRA prohibits the national committees' use of nonfederal funds for activities that in my opinion help define the national parties as political associations, including: support for state and local candidates; the coordination of activities of state and local party office holders (for example, the RNC supports meetings of, and communication among Republican State Attorneys General); political training and support of candidates, campaign managers, and grass roots activists; research on issues and policies; the organizational activities of allied groups, such as the Young Republicans; outreach to particular ethnic, racial, and women's groups; public advocacy through media, brochures, and direct mail of party policies; annual meetings and conferences; and internal communications with party members about campaigns and issues through media such as websites, direct regular mail, and direct e-mail. The ability of an organization to communicate with its membership goes directly to its associational role. What's more, the BCRA treats parties and interest groups unequally with respect to this critical associational activity: corporations, labor unions, and other membership **[*39]** organizations may use non-federal funds to communicate with their executives, administrative

personnel, members, and shareholders on any subject, including to urge support for particular candidates or issues.

49. Advocates of the BCRA claim that since 1996, parties have abused non-federal funds, employing issue ads for negative advertisements against candidates – oftentimes, without any reference to the political parties, their platforms, or the policies they support. It is important to point out, however, that interest groups have also increased their political advertisements that connect, indeed subordinate the discussion of issues to electioneering, much of it negative in tone. As an Annenberg Public Policy Center study indicates, the ads of special interest groups represented 68% of all spending on issue ads in the 1999-2000 cycle; interest groups spent more than $347 million on these issue advertisements. The names of these groups did little to tell viewers who the sponsors of these messages were; indeed, in some cases they were misleading. For example, The Citizens for Better Medicare, which spent $65 million on television ads, is funded primarily by the pharmaceutical industry. Not only were the funding sources of interest groups ads more misleading than party-sponsored ads, they also tended to be more negative, especially in the early stages of the 2000 campaign.[xxviii]

50. Whereas the BCRA will prohibit national parties from using non-federal funds for issue advocacy, interest groups can continue to use non-federal funds for issue advocacy, albeit with restrictions in the final 30 days before a primary and 60 days before a general election. It is unlikely, then, that the elimination of parties' use of nonfederal funds will reduce issue advertising. Instead, more funds will **[*40]** flow to interest groups that air issue advertising. Moreover, given the importance of the mass media in contemporary politics, restricting the funds that the political parties may use to pay for television and radio ads may very well have a deleterious effect on what deserves to called party building activities. Nearly every candidate who runs for office does so as a Democrat or Republican; consequently, it virtually is

impossible for parties to separate completely support for candidates, issue advocacy, and party building. To ask parties to do so is to forget Schattschneider's refrain that they are the "only organizations that can win elections." It is ironic that as champions of BCRA criticize parties for muting their partisanship in issue ads, the public has recoiled at the growing partisan combat in Washington, D.C., so much so that parties have sought, with the help of nonfederal funds, to navigate toward somewhat more centrist and bipartisan positions.

51. Criticism of the parties' use of issue advertising should not lead to the elimination of national parties' nonfederal funds but to greater specification of its uses. Instead of a meat cleaver approach that eliminates soft money, reform could restrict its use to more conventional party building activities. Reformers have claimed that the national parties transfer nonfederal money to state parties for the sole purpose of funding issue ads. There is ample evidence, however, that Democrats and Republicans have used these funds for a number of routine, yet critical associational activities. Research that has focused on the states, rather than presidential elections, for instance, has shown that state parties use non-federal funds in identifying supporters, mobilizing them, and strengthening the **[*41]** organizations that hold their allegiance.[xxix] Cast against the history of parties, the use of nonfederal funds serves the same purpose that party pamphlets and patronage foot soldiers played in the nineteenth century. In fact, the use of nonfederal funds for voter mobilization efforts may be one of the few devices left to parties to encourage participation in an age when barely half of the eligible electorate bothers to vote in presidential elections. As Professor La Raja shows, between the 1992 and 2000 elections cycles, spending on voter mobilization by Democratic and Republican state parties increased steadily from $9.6 million to $53.1 million. The BCRA is likely to reduce voter mobilization efforts. According to two MIT political scientists, eliminating nonfederal funds "will starve

many grass activities of state and local parties." Eliminating all current "soft money" expenditures, Stephen Ansolabehere and James Snyder estimate, "would lead to a 2% decline in voter turnout—without soft money, approximately 2 million fewer Americans would have gone to the polls in 1996."[xxx]

VI. Conclusion

52. Since the Founding, parties have had an uneasy but critical role in making American constitutional government work.

(a) Parties have forged consensus among a diversity of interests, fulfilling Madison's hope that constitutional government would balance majority rule and individual rights.

(b) They have tempered the potential for corruption in America's sprawling democracy by mediating between candidates, on the one hand, and individual donors and interest groups on the other. Party politics has **[*42]** reduced corruption by bringing factionalism to light – by making political conflict and deliberation public. Interest groups – *the agents of pressure politics* --risk corruption by shrinking the scope of politics and by hiding their own efforts to influence the political process.

(c) The two-party system has helped educate voters about the leading issues of the day, and occasionally, have engaged American voters in critical contests of opinion and resolution on vital matters such as the National Bank, slavery, and the welfare state. The parties have thus fostered a strong connection between the complex institutions of constitutional government and American citizens – they have been the signposts directing American *individuals* through the pathways of *public* life.

(d) Political parties have enhanced political participation. Study after study has shown that partisan loyalty is a critical factor in determining whether people will vote and, more fundamentally, develop strong attachments to the political system. Paradoxically, participation in elections that pit Democrat against Republican transforms individuals into citizens. In this way, parties have helped fulfill the hallowed but elusive promise of the Constitution's Preamble that ultimate sovereignty would rest in We the People.

53. The role parties have played in making American constitutional democracy work has long been recognized by political scientists. Mainstream political scientists – whether avowing progressive, centrist, or conservative principles – have **[*43]** overwhelmingly viewed the party system as a critical institution in connecting government and society.

54. Although parties have been weakened by a century of reform dedicated to forging direct ties between representative and citizens and to creating a more participatory democracy, partisanship remains the principal agent of popular rule in the United States. Party organizations have become more centralized organizations since the New Deal, but they remain, as they have always been, *national* organizations, facilitating collaboration among members at the federal, state, and local levels. Just as the country has developed historically from a decentralized rural republic into an extended commercial democracy, so parties have been living, breathing entities that have helped make self-government work on a grand scale.

55. This role of parties in strengthening civic culture has been threatened by reforms carried out in the hope of making the political process work more purely and directly – to eliminate, if you will, the *politics* of our democracy. But these reforms, unwittingly, or deliberately, hostile to the genius of American politics, have made the political process

less accountable and less democratic. Campaign finance laws have been particularly indifferent to the extraordinary power of interest groups in American politics and the important role political parties have played in ameliorating the deleterious influence of "pressure politics" on American constitutional government.

56. The BCRA brings to a dangerous culmination a regulatory regime that discourages participation, empowers special interests, and intensifies a growing crisis of citizenship. It will weaken the parties' ability to engage in the art of **[*44]** association, in those activities that have made them so important to the working of constitutional government in the United States. Moreover, the BCRA will shift money and the balance of power away from political parties and towards interest groups, with serious consequences for America's federal democracy.

I declare under penalty of perjury that the foregoing is true and correct.

s/
Sidney M. Milkis

Executed on September 22, 2002

[EXHIBITS OMITTED]

[i] E.E. Schattschneider, *Party Government* (New York: Farrar and Rinehart, 1942), 1.
[ii] Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* (New York: New American Library, 1969), Number 10, 77-84.
[iii] Henry Jones Ford, *The Rise and Growth of American Politics: A Sketch of Constitutional Development* (New York: MacMillan, 1898), Chapters 7, 8. V.O. Key also provides important commentary on how the emergence of party politics transformed the Constitution. See Key, *Politics, Parties, and Pressure Groups* (New York: Thomas A. Crowell, 1964), 200-204.
[iv] "Political Proscription," *United States Magazine and Democratic Review* 9, no. 60 (October 1841): 345.

[v] Robert Wiebe, *Self-Rule* (Chicago and London: The University of Chicago Press, 1995), 71.
[vi] Advisory Commission on Intergovernmental Relations, *The Transformation of American Politics: Implications for Federalism* (Washington, D.C.: Advisory Commission on Intergovernmental Relations, 1986), 45.
[vii] Joel H. Silbey, "To One or Another of These Parties Every Man Belongs": The American Political Experience form Andrew Jackson to the Civil War," in *Contesting Democracy; Substance and Structure in American Political History, 1775-2000*, eds. Byron E. Shafer and Anthony J. Badger (Lawrence: University Press of Kansas, 2001), 76.
[viii] *Niles' Register*, November 17, 1832,177.
[ix] Nelson W. Polsby and Aaron Wildavsky, *Presidential Elections: Strategies and Structures of American Politics*, 10th edition (New York: Chatam House Publishers, 2000), 13.
[x] Morton Keller, "The New Deal and Progressivism: A Fresh Look," in *The New Deal and the Triumph of Liberalism*, eds. Sidney M. Milkis and Jerome Mileur (Amherst: University of Massachusetts Press, 2002), 316.
[xi] Benjamin Ginsberg and Martin Shefter, *Politics By Other Means: Politicians, Prosecutors, and the Press from Watergate to Whitewater*, revised edition (New York: Norton, 1999), 95-103; Morris Fiorina, "The Dark Side of Civic Engagement," in *Civic Engagement in American Democracy*, eds., Theda Skocpol and Morris Fiorina (Washington, D.C.: Brookings Institution Press, 1999), 409.
[xii] The National Election Surveys show that "pure" independent, those who lean towards neither party, is a small minority. But a growing number of party "leaners" characterize themselves as independent, signaling a growing ambivalence about the two-party system. Since 1960, the growth in the number of independents has increased on the average of .7% a year, reaching a level of nearly 40% of the electorate in 2000.
[xiii] Benjamin Barber, *Strong Democracy* (Berkeley: University of California Press, 1984).
[xiv] Woodrow Wilson, "Constitutional Government in the United States," in *The Papers of Woodrow Wilson*, ed. Arthur S. Link, 69 vols. (Princeton University Press, 1974), 18:213-214.
[xv] Ford, *The Rise and Growth of American Politics*, 322-323.
[*45] [xvi] E.E. Schattschneider, *The Semisovereign People: A Realist's View of Democracy in Amrerica (* Fort Worth, Indiana: Harcourt Brace Jovanovich, 1960), chapters 2,3 (emphasis in original).
[xvii] Walter Dean Burnham, *Critical Elections and the Mainsprings of American Politics* (New York: Norton, 1970), 133.
[xviii] Pendleton Herring, *The Politics of Democracy: American Politics in Action* (New York: Norton, 1965).
[xix] Brief Amicus Curia, Committee For Party Renewal, *Colorado Republican Federal Campaign Committee v. Federal Election*

Commission, United States Supreme Court, No. 95-489, February 16, 1996.

[xx] Hugh Heclo, "Issue Networks and the Executive Establishment," in *The New American Political System*, ed. Anthony King (Washington, D.C.: American Enterprise Institute, 1978), 124.

[xxi] Hearing Before the Committee on Rules and Administration, United States Senate, Ninety-Sixth Congress, First Session, "To Amend the Federal Election Campaign Act of 1971, as Amended, and for Other Purposes, 8-9, 34.

[xxii] Federal Election Campaign Act Amendments of 1979, House of Representatives, 96th Congress, 1st Session, Report No. 96-422, 2.

[xxiii] A. James Reichley, "Party Politics in a Federal Polity," in *Challenges to Party Government*, ed. John Kenneth White and Jerome M. Miller (Carbondale: Southern Illinois University Press, 1992), 60.

[xxiv] Declaration of Nelson W. Polsby, *Republican National Committee and Gant Redmon v. Federal Election Commission*, United States District Court for the District of Columbia, June 15, 1999.

[xxv] Thomas B. Edsall and Juliet Eliperin, "PAC Attack II: Why Some Groups are Learning to Love Campaign Finance Reform," *Washington Post*, August 18, 2002.

[xxvi] Thomas B. Edsall, "New Ways to Harness Soft Money in Works," *Washington Post*, August 25, 2002.

[xxvii] Edsall, "PAC Attack II."

[xxviii] Annenberg Public Policy Center, University of Pennsylvania, "Issue Advertising in the1999-2000 Election Cycle," 2001.

[xxix] Ray La Raja and Elizabeth Jarvis-Shean, "Assessing the Impact of a Ban on Soft Money: Party Soft Money Spending in the 2000 Elections<' Institute of Governmental Studies and Citizen's Research Foundation, Policy Brief.

[xxx] Stephen Ansolabehere and James M. Snyder, Jr., "Soft Money, Hard Money, Strong Parties," *Columbia Law Review*, vol. 100, no. 3 (April 2000), 619.

REBUTTAL DECLARATION OF SIDNEY M. MILKIS

1. I submit this declaration to respond to the expert reports submitted by political scientists on behalf of defendants in this case. In my view, those reports significantly understate the adverse impact of the BCRA on political parties and the harm to the American political system that is likely to result from its enforcement.

2. It is difficult to take seriously the unsupported suggestion by Professors Krasno and Sorauf that the BCRA, which will eliminate all non-federal funds (so-called "soft-money") raised by the national party committees (half a billion dollars during the 2000 election cycle alone) and severely restrict state party non-federal funds, "is likely to have little or no harmful impact on . . . political parties." Krasno/Sorauf Report at 2. The sudden and dramatic loss of funding on so large a scale will necessarily cause a pronounced reduction of party operations, including large-scale layoffs of the national parties' professional staff and a resulting loss of institutional expertise. It is my understanding that the RNC alone expects to lay off approximately 40 percent of its workforce as a direct consequence of the BCRA. See **[*2]** Declaration of Jay Banning, ¶ 32. It is simply not credible to suggest that any organization can sustain so dramatic a reduction in resources while suffering "little or no harmful impact."

3. In my opinion, the Democratic and Republican parties have used non-federal funds to revitalize the national character of their organizations. American political parties have never been merely federal organizations; nor have they been merely loose coalitions of state and local organizations. Although their organizations have been decentralized, the two parties have orchestrated national campaigns; and their representatives in Congress have tended to moderate sectional or local interests in supporting national policies. In the past two decades, the Democrats and Republicans have used non-

federal funds in a manner that is consistent with this traditional role – these funds have served to strengthen state and local parties, which had atrophied considerably by the end of the 1970s, and to enhance the collaboration among federal, state, and local organizations in recruiting and electing candidates as well as formulating a unified message.

4. The defendants' expert witnesses deny this, claiming that, especially since 1996, the parties have used non-federal funds to pay for expensive media advertising that has little to do with "party building" – in Professor Thomas Mann's words, as "vehicles for implementing their newly developed strategy of federal electioneering under the guise of issue advocacy" (Mann report at 22). It is my understanding, however, that nonfederal funds have been used to strengthen the most basic forms of associational activities – voter registration, get-out-the-vote activities, party communication with its members and subsidiary organizations, and promotion of the parties' ideological views. See Declaration of Jay Banning, at ¶ 28; Declaration of Thomas Josefiak, at ¶¶ 34, 36-39, 42, 48, 82-87, 91, 95. If non-federal funds have been used in ways that do not serve these essential associational services, the response, it seems, **[*3]** should be to address those abuses. Instead, the BCRA takes a meat cleaver approach that restricts national parties in their ability to sustain critical associational activities.

5. Moreover, the BCRA will undercut the efforts of the national parties to strengthen their state and local organizations. Because many state political party committees rely heavily on what are effectively cash subsidies from the national party committees, in the form of transfers of non-federal funds, reduced operations are likely at the state and local level as well. Professors Krasno and Sorauf indicate in their report that state parties receive 46% of their funds from non-federal transfers by the national party committees. See Krasno/Sorauf Report at 10. Again, it is exceedingly unlikely that such significant flows of money could be eliminated

without harming the recipients of those funds. State parties' ability to recover from this loss will be severely hampered by restrictions on fundraising, including fundraising assistance from national party committees and federal officeholders. Furthermore, as I indicate in my affirmative declaration for this case, the BCRA will severely restrict the ways in which parties may raise so-called "Levin Funds" – nonfederal funds that state and local parties may raise, in contributions up to $10, 000 per donor, so long as state law allows, for certain "federal election activity." For example, state parties are prohibited from engaging in joint-fundraising with other state parties in raising these funds (see Milkis affirmative declaration, at ¶44).

6. I disagree with the claim of the defendants' expert witnesses that state parties have not benefited from the injection of nonfederal funds into their organizations. My research on party organizations indicates that state parties are far from the Potemkin villages they are depicted to be in the accounts of the defendants' expert witnesses. The constitutional division between the federal and state governments has allowed state parties to use nonfederal funds to exert independence in formulating platforms, recruiting candidates, and carrying out **[*4]** their associational tasks. As Professor Ray La Raja has shown in his affirmative declaration for this case, state organizations are doing more than airing issue ads during the election campaign season: even in the 2000 election cycle, when media spending was high, combined spending on mobilizing voters, distributing grassroots materials, and paying the administrative expenses of the state party organization amounts to more than that spent on issue advertisements.

7. The sudden loss of funding on so large a scale will by itself be a heavy blow to the parties, but much more is at stake. The other crucial part of the story, which the defendants' political scientist experts either overlook or substantially understate, is the fact that the BCRA leaves

special interest groups largely free to continue their recent, massive use of non-federal funds to define the terms of political debate. This shift in the balance of power between broadly based parties and single-issue interest groups, a shift that favors "pressure politics" over "party politics," would in my view be one of the most significant and harmful legacies of the BCRA.

8. The view expressed by Professors Krasno and Sorauf that "a fairly straightforward model of the post-BCRA world exists in the period prior to 1995" simply ignores the ways the political environment has changed since then. See Krasno/Sorauf Report at 85. As research by the Annenberg Center for Public Policy and by Professor Magleby have clearly shown, since at least the mid-1990s, special interest groups have spent very large and growing sums of non-federal funds on issue advocacy. An Annenberg study showed that during the 2000 cycle special interests outspent parties on issue advertising by a ratio of 2 to 1. Parties have been forced to respond to this onslaught of special interest money with defensive advertising, in order to avoid having their messages drowned out in the cacophony of special interest advocacy.

[*5] 9. While BCRA imposes an absolute ban on the raising or spending of non-federal funds by national party committees, it does little to rein in interest groups. True, special interests will no longer be able to broadcast issue advertisements naming federal candidates within 30 days of a primary or 60 days of a general election (assuming that provision is not struck down). They will, however, remain entirely free to raise unlimited amounts of non-federal funds from wealthy individuals and corporations and to spend those funds on issue advertising naming candidates right up until the 31st day before a primary and the 61st day before a general election. Such advertising can serve to frame the terms of debate, all the more so because parties will be constrained in their ability effectively to respond. The DNC made effective use of just such a strategy to shape the political environment

by airing issue advertisements in 1995, long before the 1996 primary or general elections.

10. During the election season itself, when the 30-day and 60-day limits are in effect, special interest groups will remain free to spend unlimited sums on a wide range of activities that the BCRA will not regulate. These include so-called "ground war" functions, such as direct mail, telephone banks, door-to-door canvassing, and distribution of literature. According to Democratic media consultant Raymond Strother, in his experience, interest groups are known to spend large sums on television, radio, direct mail, and so-called "push polls" in the weeks before elections. Strother notes that because such activities are not subject to disclosure requirements, "[w]e had no idea where the money came from." Declaration of Raymond D. Strother, at ¶ 15. Under the BCRA, interest groups will remain free to use 100% non-federal funds for these purposes, although they may focus more of their effort late in the campaign season on direct mail, push polls, and the like.

[*6] 11. Under FECA and the BCRA, special interest membership organizations and corporations are free to use unlimited non-federal funds to pay for so-called "restricted class" campaign-related communications to their members, stockholders, executive or administrative employees, and the families of each of these groups. Unions and trade associations, and to a lesser extent corporations, already have made broad use of this exception. According to the FEC, during the 2000 election cycle, unions, interest groups, and corporations spent millions on restricted class communications. For example, the national AFL-CIO reported spending $4,220,500, in addition to amounts spent separately by AFL-CIO locals. The National Education Association reported spending $2,921,070. The National Rifle Association reported spending $1,795,198. Altogether, there were $17,757,818 in reported restricted class communications -- all paid for with 100% non-federal funds --

during the 2000 election cycle. See Declaration of Robert W. Biersack, at Table 13. It is my understanding that the actual amounts spent are likely to be higher, because not all such expenditures are required to be reported to the FEC. The use by interest groups of non-federal funds to pay for such communications, which may expressly advocate the election or defeat of specific federal candidates, will no doubt increase under the BCRA. We can expect that non-federal funds that cannot be spent on issue advertising during election seasons will be used for other forms of political communication, such as "restricted class" communications. Finally, special interest groups remain free to use non-federal funds to conduct broadcast advertising that does not refer to federal candidates but which may nonetheless be tailored to advance the agenda and reinforce the message of particular candidates.

12. As Professors Krasno and Sorauf state, "[m]oney is by nature easily transferable, completely mobile. . . . Its fluidity quickly validates the old adage that in any [*7] transactional nexus activity flows from the more regulated portions to the less regulated ones." Krasno/Sorauf Report at 90. After BCRA, the latitude enjoyed by special interest groups to raise and spend non-federal funds is, for that very reason, likely to attract non-federal funds currently directed to party committees. The emphasis that BCRA puts on federal funds ("hard money") also benefits interest group organizations like PACs and business groups, which can act as "bundlers" of individual contributions by gathering like-minded people from around the country to give the maximum amount permitted to many campaigns.

13. I am aware of no evidence suggesting that special interest groups will unilaterally disarm in the wake of the BCRA. To the contrary, these groups are likely to press their advantage once parties' ability to raise and spend non-federal funds is tightly restricted. Indeed, there is evidence that they already are making plans to do so. This past summer, the Business and Industry PAC (BIPAC), an organization

supported by business and trade associations, held a strategy session of business and trade association executives. According to Gary Casey, BIPAC president and CEO, there was enthusiastic agreement at this meeting that PACs have become "the coin of the realm." Mr. Casey's view was that BCRA has restored the conditions prior to the enactment of the 1979 Amendments to FECA, which marked the beginning of efforts by Congress and the FEC to reinvigorate parties as a bulwark against growing interest group influence. "Now we are back," he predicted, "to where PACs are not only important, but good." (Thomas B. Edsall and Juliet Eilperin, *Washington Post*, August 18, 2002.)

14. As I point out in myaff irmative declaration prepared for this case, the new era of interest group domination is likely to be worse. Political activists formerly associated with the Democratic and Republican parties are reported to be creating new groups to fill the gap created by BCRA, employing provisions of the tax code that allow the creation of tax-exempt [*8] organizations that they claim are not covered by the new law. These groups include Progress for America, which champions policies of the Bush Administration, and the Progressive Donor Network, to help women's rights, environmental, and civil rights groups. As Mike Lux of the Progressive Donor Network testified in his deposition in this case, "[a] lot of givers instead of giving money to political parties, since that will be prohibited, they will be looking for other organizations that may be effective politically to give money to." See Deposition of Mike Lux, at 51:4-8. These new organizations, according to officials involved in forming them, can raise and spend "soft" money as long as they do not coordinate their efforts with the political parties or candidates. (Thomas Edsell, *Washington Post*, August 25, 2002).

15. Not only will these groups confound the desire of BCRA supporters to restrict "soft money," they also will raise and disseminate such funds with far less disclosure than

have political parties. As Professors Krasno and Sorauf point out, when nonfederal funds were channeled through parties, laws required full disclosure of both contributors and expenditures. (Krasno/Sorauf report at 85). But the new vehicles for this money are likely to be more secretive, with little or no obligation to reveal their activities. Ironically, Krasno and Sorauf suggest that without the enactment of BCRA, party organizations might have metastasized into interest groups, which would be "under their control or trusted allies, ...to avoid any disclosure of receipts and expenditures." In fact, the enactment of BCRA has encouraged, not proscribed, a proliferation of party surrogates. What's more, it is my opinion that these spin-off organizations will operate independently in the post-BCRA regulatory regime. They will do so, in part, out of consideration for the new law, which restricts collaboration with formal party committees. But legal concerns will combine with ideological considerations. For example, the Progressive Donor Network, representing liberal interests, will be unlikely to find organizational fellowship with the **[*9]** centrist, New Democratic Network, another organization formed to gain access to the nonfederal funds that, prior to BCRA, would have gone to political parties. BCRA thus threatens to badly fragment parties.

16. Consequently, the BCRA's substantial restriction of party financial resources and disruption of the ties that bind the national, state, and local party committees together as a cohesive political network will materially weaken the parties both in absolute terms and -- more ominously -- relative to special interest groups. Those special interest groups rarely share the parties' need to build consensus among a broad constituency. Rather, they are most often focused on a narrow set of issues, or even a single issue, and are far more likely to represent one or the other extreme end of the political spectrum than they are to represent the broad center. As Morton Keller and I explain in our affirmative declarations in this case, the consequences of reorienting our politics away from the parties and toward the

pressure politics of the special interests could be serious indeed. When parties have been weak – during the 1850s, the 1920s, and the 1970s, for example -- sectional and interest group politics have dominated the national and state capitals.

17. Professors Krasno and Sorauf thus ignore the important lessons of American political history when they claim that parties possess "natural" advantages over interest groups. (Krasno/Sorauf at 39) Parties always have had an indispensable but fragile place in the political life of the nation. American political culture, dominated by individualism, privacy, and rights, has bestowed important standing on interest groups. The power of interest groups, always significant, has become all the more so since the early part of the twentieth century. With the growth of big government amid the development of a complex commercial society, interest groups have become imposing rivals to political parties, capable of pressuring **[*10]** government to enact policies that benefit small constituencies at the expense of the general public. As the legislative history of the 1979 Amendments to FECA show, these changes in the campaign finance laws were made in the hope of correcting the advantage that the organic statute gave to interest group politics. As I noted in my affirmative declaration for this case, public officials, such as Morley Winograd, president of the Association of State Democratic Chairpersons, urged that steps be taken to strengthen the "politics of party, the politics of coalition and accommodation, which is our nation's best defense against the divisiveness of special interest politics" (paragraph 37). These amendments authorized state and local party committees to use funds more freely in carrying out their critical associational activities; during the 1980s and 1990s, both Democrats and Republicans made use of nonfederal funds to pump new life into their state and local organizations. BCRA risks reverting to the situation that prevailed during the 1970s, when advocacy groups dominated the councils of American government.

18. The defendants' expert witnesses deny that parties have made good use of nonfederal funds; in fact, they insist that "soft money," has corrupted or "appeared" to corrupt the political process. With regard to whether BCRA is necessary to address corruption or "the appearance of corruption," Professor Mann writes that "[m]ost importantly, soft money has led the parties to become the avenue by which elected officials and large private donors frequently come together. . . . As inducements for large contributions, policymakers grant access and provide opportunities for face-to-face discussions in intimate settings with the party's most prominent public officials." Mann Report at 29. Donors and officeholders were getting together long before "soft money" became the focus of reformers' efforts. The parties have long conducted "federal funds" (sometimes called "hard money") fundraising dinner galas and **[*11]** fundraising programs at which donors and candidates have an opportunity to meet. The RNC's "Eagles" fundraising program, for example, has long featured dinners and gatherings of the sort to which Professor Mann presumably objects, beginning in the late 1970s. These events, to which federal funds donors are invited, are, of course, perfectly permissible under both FECA and the BCRA and will likely continue after BCRA takes effect.

19. The BCRA does not purport to end such interaction between donors and officeholders. Nor does it prevent interest groups from hosting fundraisers much like those the parties conduct, featuring opportunities for wealthy donors and corporate executives to meet with federal officeholders. That interest groups use federal officeholders to raise funds, just as political parties do, is clear. See, e.g., Declaration of Joe Solmonese (EMILY's List), at ¶ 16; Declaration of Jane Gallagher (NARAL), at ¶ 20; Declaration of Debra Callahan (League of Conservation Voters), at ¶ 7; Declaration of Simon Rosenberg (New Democrat Network), at ¶ 12; Declaration of Deborah Sease (Sierra Club), at ¶ 15. If contacts between donors and officeholders somehow create

the "appearance of corruption," why is it that the BCRA leaves special interests free to be the "avenue by which elected officials and large private donors frequently come together"?

20. In my opinion as a political scientist who has long studied the role of political parties and interest groups in America, parties are far less likely than special interest groups to facilitate corruption. The worst episode of corruption in recent American history, Watergate, featured, as Professor Mann notes, attaché cases stuffed with thousands of dollars, illegal corporate contributions, and conduits to hide the original source of contributions (Mann report at 4). But Watergate did not implicate the Republican party, which the Nixon administration largely ignored; rather, it arose from the indiscretions of the Committee to Relect **[*12]** President Richard Nixon (CREEP). CREEP marked an advance in the candidate-centered campaign, which had been evolving since the Progressive era; it was set up to operate with almost complete independence from the Republican party. A principal lesson of Watergate, often missed by campaign finance reformers, is that candidates and public officials who are not held accountable to collective, public organizations like parties are more likely to engage in peculation and to abuse power.

21. The Republican and Democratic parties are large, complex associations representing very diverse coalitions of voters, adherents, and interests. Professors Krasno and Sorauf note that political parties are "big tent" organizations, dedicated to building coalitions that can win elections and govern (Krasno/Sorauf Report at 24). But they fail to acknowledge that this inclusive character of parties gives them the resources, as Henry Jones Ford noted more than a century ago in his classic account of *The Rise and Growth of American Politics*, "to interpose a party obligation between legislative marauders and their prey." Just as important, parties are *collective organizations* with long-

standing commitments to principles and platforms. American political parties have rarely been doctrinaire, to be sure; but they are not, as the defendants' expert witnesses caricature them, merely power-seeking organizations without public purposes. Indeed, writing at a time when the Republicans and Democrats relied on the "spoils system" and were far less subject to disclosure than today's parties, Ford noted that the need to win elections and govern, in the name of platforms and principles, made parties *sui generis* public institutions: "Partisanship tends to establish a connection based on an avowed public obligation, while corruption consults private and individual interests which secret themselves from view and avoid accountability" (Ford at 322-323).Weakening the parties by a massive reduction in their **[*13]** resources therefore undermines the one major American political institution that is publicly accountable and thus less prone to corruption.

22. Defendants' political science experts suggest that the appearance of corruption that they associate with large donations to parties derives from either (1) candidates' solicitation of non-federal funds for parties in a manner that effectively earmarks the funds for that candidate's use (e.g., through joint fundraising committees), or (2) candidates coordination with the party of the use of non-federal funds to benefit the candidate (e.g., the alleged coordination between the Clinton-Gore campaign and the DNC during the 1996 election cycle). (Mann Report at 19-20, 29-30). In both cases, their complaint lies with what they perceive to be lax enforcement by the Federal Election Commission of the existing rules against earmarking of funds and coordination between candidates and parties.

23. It is my understanding that under existing law, a candidate may not solicit a donation of non-federal funds that is earmarked for use in his or her campaign. If Congress believed it necessary to further clarify this point or to take protective measures to prevent such earmarking, it could have

done so without banning national party non-federal funds altogether. Concerns about the extent of coordination between candidates and parties with regard to issue advertising could likewise be addressed short of an absolute ban on national party non-federal funds. The draconian approach adopted by Congress -- an outright ban on national party non-federal funds -- was hardly necessary to address these earmarking and coordination concerns.

I declare under penalty of perjury that the foregoing is true and correct.

s/
Sidney M. Milkis

Executed on October 7, 2002

[2 PCS ER 983]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATOR MITCH McCONNELL, *et al*,
Plaintiffs,
v.
FEDERAL ELECTION COMMISSION, *et al*.
Defendants.

Civil Action No.: 02-CV-0582 (CKK, KLH, RJL)

CALIFORNIA DEMOCRATIC PARTY, *et al*,
Plaintiffs,
v.
FEDERAL ELECTION COMMISSION, *et al*.
Defendants.

Civil Action No.: 02-CV-0875 (CKK, KLH, RJL)

CONSOLIDATED ACTIONS

REBUTTAL REPORT OF
PROF. JAMES M. SNYDER, JR.
(REVISED)

CREDENTIALS

I am a Professor at the Massachusetts Institute of Technology, where I have been employed since 1992. I currently hold a joint appointment in the departments of political science and economics. I hold the Arthur and Ruth Sloan Chair in Political Science, and I am also a professor in the department of economics. From 1985-1992, I was employed as an assistant professor in the department of economics at the University of Chicago. I received my Ph.D.

from the California Institute of Technology in 1985. A current version of my CV is attached to the affidavit.

[2 PCS ER 984]

My research is on American elections, campaign finance, political parties, and legislative behavior. I have published more than 45 articles, comment, and notes on these topics, most of which are in peer-reviewed professional journals. My research on campaign finance includes formal models and statistical analyses of several questions: What factors drive the distribution of campaign contributions across different types of candidates and races? What has caused the increase in campaign spending over time? What factors contribute to the accumulation of campaign "warchests"? I have also conducted several analyses attempting to identify what factors are most important in driving legislative roll call voting behavior. More recently, I have conducted several analyses attempting to estimate the relative importance of partisanship, incumbency and other factors in U.S. elections, and how and why the relative importance of different factors has changed over time.

I have not testified as an expert at trial or deposition in any other case within the last four years. I am being compensated at the rate of $325/hour for my work on this matter.

1. Campaign contributions and political influence.

In their expert reports, Donald Green, Derek Bok, Thomas Mann, Thomas Stratmann, and others argue that the current campaign finance system allows large donors to improperly influence the policymaking process. I begin by noting that there is a theoretical difficulty with this argument (point 1.1). In points 1.2-1.5, I discuss the quantitative empirical literature in political science and economics on this

issue, and show that overall the evidence presented in this literature is quite weak. In point 1.6, I compare political contributions with other activities. Finally, in point 1.7, I consider the role political *parties* might play in mediating the relationship between individual politicians and interest groups.

1.1. If large campaign contributions by interest groups and individuals are "buying" or "renting" public policies, then why isn't there *more* money in politics?

Gordon Tullock (1972) made this point 30 years ago, but it is just as relevant today. Tullock and others used the term "rent-seeking" to describe the actions taken by economic interest groups seeking to influence government policies for their own benefits. The potential gain from such rent-seeking behavior is enormous – hundreds of billions of dollars in federal, state and local budgets, licensing, trade restrictions, price supports, and regulations that transfer billions more from one group to another. And the purported rates of return are equally enormous – groups that participate are said to reap hundreds or even thousands of dollars per dollar contributed to politics (see Ansolabehere, *et al.*, 2002). If so, then why don't interest groups give even *more* money for even *more* favorable treatment? And why don't *more* special interests enter this lucrative "market" for policy?

Soft money contributions are uncapped, so billions *could* flow there if it was worthwhile. And although hard money donations from PACs are capped, less than 5% of all such PAC [2 PCS ER 985] contributions to House and Senate candidates are at or near the $10,000 limit.[1] The average PAC contribution is $1,700. Corporations give an average

[1] The limit is $5,000 for the primary election and $5,000 for the general election, so for most candidates the effective limit during each 2-year election cycle is $10,000.

contribution of approximately $1,400 to legislators; trade associations and membership groups give average contributions of approximately $1,700; and, labor unions give average contributions of $2,200. Viewed from the perspective of rent-seeking legislature, these sums are very small. The following hypothetical calculation makes the point: There were about 2,600 active corporate, labor, and trade association PACs in 1998, and about 470 congressional races. If each active PAC gave $10,000 to one candidate in each race, total contributions would be $10.8 billion. This is more than 50 times as much as these PACs actually contributed (about $200 million). Why are they not doing this?

Not only do existing corporate PACs give well below the legal limits, most corporations do not have a PAC at all. Even among Fortune 500 companies – all of which have revenues in excess of $3 billion a year, and all of which are affected by government policies – roughly 40% do not have a PAC. And about one-third of all industries have *no* firms with PACs (Grier, Munger and Roberts, 1994, p. 916, Table 1). If policy is so easy to buy, then why are these firms inactive?

In fact, most campaign contributions come, ultimately, from individuals. Such contributions constituted about 80% of the combined total hard and soft money raised for the 2000 federal elections.[2]

[2] Ultimately, even PAC contributions to candidates come from funds the PACs raise from individual donors. Candidate and party committees raised nearly $3 billion during the 1999-2000 election cycle. About $620 million came from the public presidential fund, or directly from the treasuries of corporations, labor unions, and associations in soft-money donations to the parties. The remainder, nearly $2.4 billion, was from individuals. This includes contributions from candidates themselves. (See Ansolabehere, *et al.*, 2002, for details.)

Moreover, most of the "marginal" dollars raised by congressional campaigns are also from individuals. Consider, for example, the difference between U.S. senate campaigns in small states and large states. Table 1 below divides the states into three groups – small, medium, and large – based on the number of congressional districts in each, and summarized contributions for the 1997-98 election cycle.[3]

Table 1: Campaign Contribution by State Size

	Obs.	Avg. Total Receipts	Avg. Indiv. Receipts	Avg. PAC Receipts
Small states (1-6 districts)	58	1,450,000	961,000	329,000
Medium states (7-12 districts)	34	2,250,000	1,754,000	329,000
Large states (19-52 districts)	29	4,381,000	3,346,000	333,000
All states	121	2,377,000	1,755,000	329,000

[2 PCS ER 986]

The table shows clearly that the "demand" for campaign funds is much greater in large states than in small – most likely because there are many more voters to reach in large states. The "supply" of campaign funds *from individuals* is also much larger in large states – most likely because there are many more people in these states. But the supply of contributions from PACs is essentially constant. That is, even though senate candidates running in large states raise and spend far more than candidates in small states, virtually all of the difference in

[3] All senate candidates with $10,000 or more in total receipts are included. Individual receipts include contributions by candidates to their own campaigns. PAC receipts include all receipts from corporate, labor, trade association, and cooperative PACs ("nonconnected" PACs excluded).

spending is accounted for by individual donations rather than PAC donations. The "marginal" dollar demanded is raised from individuals, not PACs.[4]

Table 2 shows the difference between lopsided and close races for U.S. house seats, where close races are defined as those where the winning margin was under 65%.

Table 2: Campaign Contributions by Winning Margin

	Obs.	Avg. Total Receipts	Avg. Indiv. Receipts	Avg. PAC Receipts
Lopsided races (margin > 65%)	323	446,000	234,000	166,000
Close races (margin < 65%)	374	754,000	447,000	205,000
All races	697	611,000	348,000	187,000

Not surprisingly, the "demand" for campaign funds is greater in close races than lopsided races. And, the "supply" of campaign funds *from individuals* is much larger in close races – nearly double the amount in lopsided races. PAC contributions are also larger in close races than in lopsided races. However, this difference is smaller than the difference for individual contributions, both in absolute and percentage terms. Thus, candidates in lopsided races raised about 37% of their money from PACs, while candidates in close races raised only about 27% from PACs. Again, most of the "marginal" dollars are from individuals rather than PACs – of the $308,000 additional dollars raised by candidates in close races (on average), $213,000, or 70%, came from individuals.[5]

[4] See Snyder (1993) and Ansolabehere and Snyder (1999) for more detailed analyses.

[5] Party contributions and coordinated expenditures are also much greater in close races – the average for the lopsided races in Table 2 was just

Why does it matter whether campaign donations come from individuals or PACs? First, most individual contributions are small, almost surely too small to be a significant source of influence. For example, in the 1998 congressional races, candidates raised a total of $509 million from individuals and personal funds – of this, only $171 million (about 33%) came from individuals in amounts greater than $750. A typical incumbent raised $556,000 from individuals, so each $1,000 contribution only represents 0.18% of the total raised. This is hardly enough to believe that an incumbent would feel a "debt" to the contributor.

Second, virtually all of the theoretical models of rent-seeking activity that imply that a *small* amount of campaign contributions can "buy" a *large* amount in "policy favors" – *i.e.*, that the rate of return on contributions can be very large – make strong assumptions about what candidates can [2 PCS ER 987] and cannot do.[6] In particular, these models assume that candidates do *not* to have access to a large pool of individual donations, but instead rely heavily on interest group donations at the margin. The tables above suggest that this assumption is unrealistic, and therefore the conclusions of these models may not be empirically relevant. That is, since senators and representatives rely so much on *individual* contributions, both on average and at the margin, it seems unlikely that they would risk scandal by "selling" public policies worth hundreds of billions of dollars for relatively small amounts in interest group contributions.

Finally, what *does* drive the overall level of contributions? Ansolabehere, *et al.* (2002) argue that total national income does. As income rises, contributions rise proportionately. They show that this holds both at the national

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$3,200, while the average for the close races was $34,900.

[6] See, for example, Grossman and Helpman (2001) and Helpman and Persson (2001).

level and the state level. For example, total campaign contributions in federal elections over the four-year period 1995-1998 were almost exactly the same fraction of GDP as they were over the period 1979-1982. Regression analyses show that per-capita campaign spending in gubernatorial races over the period 1976-2000 was strongly correlated with state per-capital income and electoral competition. Moreover, after controlling for income and electoral competition, campaign spending was *not* significantly related to per-capita state government spending. If rent-seeking was the main factor driving contributions, then government spending should have been a significant predictor of contribution levels (the greater the level of government spending, the more rents there are to seek). It was not.

1.2. Campaign contributions and roll-call voting.

Almost all quantitative studies that attempt to link campaign contributions and legislative actions focus on roll-call votes. Smith (1995), Baumgartner and Leech (1998), and Ansolabehere, *et al.* (2002) survey this literature in detail – about three dozen published studies in all. Ansolabehere, *et al*, summarize this literature as follows: "In three out of four instances, campaign contributions had no statistically significant effects on legislation or had the wrong sign (suggesting that more contributions lead to less support). Also, given the difficulty of publishing 'non-results' in academic journals, we suspect that the true incidence of papers written showing campaign contributions influence votes is even smaller" (Ansolabehere, *et al.*, 2002, p. 17). Smith concludes as follows: "While our understanding of interest group influence is better than it was a decade ago, it nevertheless remains quite tentative. This is certainly the case when it comes to understanding what role interest groups play in setting agendas, formulating policy alternatives, or in persuading,

pressuring, and mobilizing the members of congressional subcommittees or committees. In these areas, there are only a smattering of studies, and so it's readily apparent that what we know is more speculative than definitive. But this is also true about our understanding of the role of interest groups in more heavily investigated areas – such as in what effects campaign contributions or lobbying activities have on roll-call voting on the House and Senate floors – where the finds are both conflicting and methodologically suspect, and thus ultimately inconclusive" (Smith, 1995, p. 122-123).

Virtually all analyses examining the impact of contributions on roll-call voting use some form of regression analysis – either a linear regression model, or a non-linear regression model, such as [2 PCS ER 988] probit or logit regression. Regression techniques allow researchers to control for other factors believed to influence roll-call voting behavior – such as party affiliation, constituent interests, and (if good measures can be found) the personal ideology of the legislator – and thereby isolate the independent effects of campaign contributions, at least in principle. The models are usually estimated via ordinary least squares (in the case of linear regression) or maximum likelihood (in the case of probit and logit regression).

As all three surveys discuss, however, estimating the independent effect of campaign contributions is an especially difficult problem, and single-equation regression models estimated via ordinary least squares or maximum likelihood methods are almost surely inadequate. There are two main reasons. First, campaign contributions by interest groups are not given out randomly. Rather, most groups tend to give to legislators that are friendly to their cause, or to candidates in tight races where the money is most likely to be effective, or, in some cases, to legislators in powerful positions. Second, it is extremely difficult to measure certain key variables. Two variables are especially problematic: the predominant view in

each legislator's constituency on the issue involved in the roll-call (*e.g.*, how many people in the district favor a particular banking regulation, and how many oppose it?), and each legislator's personal views on the issue. Failure to deal adequately with these problems leads to two well-known sources of estimation bias: simultaneous-equation bias and omitted variable bias. And, most studies in the literature fail to deal adequately with these problems.

Donald Green and Thomas Stratmann acknowledge these weaknesses in their reports. Green puts it as follows: "The aforementioned studies are suggestive, but they suffer from a basic methodological limitation. Correlations between contributions and legislative behavior cannot disentangle whether contributors reward fealty, create it, or merely reflect ideological affinity between legislators and their financial backers" (p. 24). Stratmann puts it as follows: "Any research examining the effects of campaign contributions on voting behavior, and wanting to establish a causal effect going from contributions to voting behavior, has to recognize that contributors may give to their friends, and thus that a vote favoring a contributor may not indicate that the vote has been 'bought'" (point 16).

A standard technique for addressing simultaneous-equation bias is instrumental variables (two-stage least squares being a special case). However, as Ansolabehere, *et al.* (2002) note, only one-third of the studies they surveyed employ instrumental variables to deal with the problem of simultaneous-equation bias. These studies are no more likely to find statistically significant effects than the studies that fail to deal with the issue; in fact, overall they are slightly less likely to find significant effects.

Solving the second problem is equally difficult. The problem is that researchers typically cannot find adequate measures of how legislators' would vote in the absence of contributions. Moreover, because groups tend to give

contributions to legislators that are sympathetic to their views (see the quotes from Green and Stratmann above), omitting a good measure of legislators' *ex ante* attitudes toward the group will result in estimates that are biased towards the conclusion that contributions buy roll-call votes.

A standard technique for dealing with omitted variable bias is fixed-effects, if the researcher has access to data with a panel structure. In some cases, instrumental variables might also be used [2 PCS ER 989] to reduce or eliminate omitted variable bias. Using legislator-specific fixed effects probably provides the most compelling estimates, because this technique controls for each legislator's own (average) preference in addition to district preferences. There is strong evidence that legislators are only moderately constrained by their constituencies when casting roll-call votes, so controlling only for district preferences is not sufficient.[7] To my knowledge, there are only three papers that use member-specific fixed effects, and all are quite recent (Bronars and Lott, 1997; Stratmann, 2002; and Ansolabehere, *et al.*, 2002).[8]

Stratmann (2002) finds that contributions had a statistically significant impact on roll-call voting on the repeal of the Glass Steagall Act. On the other hand, Bronars and Lott (1997) find that campaign contributions had *no significant effects* on members' voting on several different issues. Similarly, Ansolabehere, *et al.* (2002) study six interest group

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[7] See, for example, Kingdon (1989), Poole and Rosenthal (1984, 1997), Levitt (1996), and Ansolabehere, *et al.* (2001).

[8] In his report, Stratmann claims that his 2002 study was "the first study of its kind that examines whether changes in contributions over time lead to changes in legislators' voting" (point 22). He was evidently unaware of the Bronars and Lott (1997) paper. That study, entitled "Do Campaign Donations Alter How a Politician Votes? Or, Do Donors Support Candidates Who Value the Same Things That They Do?" was published five years ago in *The Journal of Law and Economics* (the leading journal on law and economics).

roll-call scores, and find *no significant effects* of contributions on any of the scores (the groups are the Chamber of Commerce of the U.S., the AFL-CIO, the American Security Council, the Consumer Federation of America, the League of Conservation Voters, and the National Education Association). Thus, even in these careful studies the evidence that contributions influence roll-call voting behavior is quite mixed. Two out of three studies fail to find significant effects. Moreover, counting issues rather than papers, there is evidence that contributions had a statistically significant effect on roll-call voting only on one issue out of six (Stratmann's paper studied only one issue, while the other papers each studied several). This is even lower that the ratio found in the full set of more than 36 studies (see above).

1.3. Campaign contributions and legislative effort.

Critics of the "non-findings" discussed at 1.2 above often point out that roll-call votes are highly visible acts. They argue that although legislators are unlikely to risk selling their votes for sums as small as $1,000 or $2,000, they might supply "effort" for contributions earlier in the legislative process when their actions are more hidden. There is basically one careful study of this idea (Hall and Wayman, 1990), which is cited time and again in the literature, and which Donald Green cites this paper in his report. The paper studies three cases: the 1982 Dairy Stabilization Act, the 1982 Job Training Partnership Act, and the 1984 Natural Gas Marketing Policy Act, and the dependent variable for each case is a measure of the "effort" exerted by each legislator on the relevant House committee. In fact, this study suffers from three severe methodological flaws. The three flaws are: (1) treating variables as instruments that are almost surely invalid instruments, (2) improperly estimating a regression with non-linear functions of an endogenous

variable, and (3) running regressions with interacted variables but omitting the variables that measure the "main effects." [2 PCS ER 990]

First, Hall and Wayman (1990) use *party affiliation* and *group roll-call voting score* as instrumental variables.[9] These are *not* valid instruments, because they cannot be excluded from the second stage equation. Instruments are variables that *directly* affect the endogenous variable in the equation of interest, but do *not* directly affect the dependent variable in that equation. In the case of Hall and Wayman's study, party affiliation is a valid instrument only if a member's party affiliation is *not* a potentially significant predictor of how much effort a representative will devote towards legislation on issues such as job-training programs or business regulation. Similarly, the voting score is a valid instrument only if a member's roll-call support score for a group is *not* a potentially significant predictor of how much effort a representative will devote to helping or opposing legislation favoring that group. We must believe instead that a member's roll-call voting score *only* affects how much money the member receives from the group, not how hard he or she works for the group in committee. These are wholly implausible assumptions. As a result, it is quite likely that the estimates they present in their paper are biased, and, moreover, biased toward finding a significant effect of campaign contributions on behavior even when no such effect exists.

The literature that pays attention to simultaneous-equation bias uses two types of variables as instruments: the degree of electoral competition, and measures of members'

[9] See footnote 18 of their paper, where they state: "In estimating the first state, we adapted the contributions model from the substantial literature on the allocation strategies of national PACs, ... including three variables that qualified as instruments: party, the relevant voting index, and the marginality of the district."

relative "power" inside the House (see Chappell, 1981, 1982; Welch, 1982; Kau, Keenan and Rubin, 1982; Grenzke, 1989; Stratmann, 1991, 1995; and Ansolabehere, *et al.*, 2002). The idea behind the first type of variable is that a close race increases an incumbent's demand for PAC contributions, producing an exogenous shift in contributions via in increase in the propensity to "sell" services, including roll-call votes. The idea behind the second variable is that groups give more to powerful members because their support is especially valuable. *None* of the studies mentioned above use party affiliation or roll-call voting scores as instruments.

Second, the main regressions shown in Hall and Wayman's (1990) paper are what Hausman (1983), Wooldridge (2002) and others call the "forbidden regression." (Note, the term forbidden is probably used to as a special warning to students, because although the procedure is intuitive and may appear reasonable, it leads to inconsistent, and therefore likely biased, estimates.) The problem arises when the researcher estimates non-linear simultaneous equation models. Hausman (1983, footnote 60) summarizes it as follows: "It is important to do true instrumental variable estimation here, not 'repeated least squares.' True IV estimation leads to consistent estimates while the analogue of 2SLS is often inconsistent. Inconsistency occurs when a non-linear function of a predicted endogenous variable is used in the second stage of the estimation procedure. At MIT this latter estimator is called the 'forbidden regression'." Wooldridge (2002, p. 235-236) also discusses the problem: "Trying to mimic 2SLS or 3SLS by substituting fitted values for some of the endogenous variables inside the nonlinear functions is usually a mistake: neither the conditional expectation nor the linear projection operator passes through nonlinear functions, and so such attempts rarely produce consistent estimators in nonlinear systems... This two-step procedure is *not* the same ... as 2SLS, and, except in special circumstances, it does *not* produce consistent

estimates." (He gives a detailed example on page 236 of his book.) [2 PCS ER 991]

Hall and Wayman's analysis suffers from exactly this problem. Their model is non-linear because they interact the endogenous variable – campaign contributions – with measures of likely supporters and likely opponents.[10] They then use *exactly* the procedure that econometricians advise against. That is, they use non-linear functions of the predicted endogenous variable (the predicted endogenous variable multiplied by the "likely supporter" and "likely opponent variables") in the second stage regressions – this is the "forbidden regression." This means the estimates reported in the main tables in their paper are almost surely inconsistent, and therefore almost surely biased.

Finally, although interacted variables are included in the main regression equations, the variables measuring the "main effects" are omitted. That is, the regression includes the interaction variables *contributions ´ likely supporter* and *contributions ´ likely opponent*, but excludes the "main" variables *contributions*, *likely supporter*, and *likely opponent*. Omitting these terms can easily lead to improper inferences. Williams summarizes the situation as follows: "In general, models with interaction effects should also include the main effects of the variables that were used to compute the interaction terms, even if these main effects are not significant.

[10] Hall and Wayman (1990) describe the construction of these interaction variables on p. 808: "Given that we expect very different effects of contributions on the behavior of likely supporters and opponents, however, the model requires two separate interactions: *Money to supporters* is the product of contributions and the member's distance from the mean NFU score where the members' rating is greater than the mean; the money-support term is zero otherwise. *Money to opponents* is the product of contributions and the member's distance from the mean NFU score, where the member's rating is less than the mean; the money-opposition term is zero otherwise."

Otherwise, main effects and interaction effects can get confounded. Further, it can be shown that, if main effects are not included, arbitrary changes in the zero point of the original variables can result in important changes in the apparent effects of the interaction terms."[11]

Overall, then, Hall and Wayman's (1990) study has three notable flaws. The main estimates presented in their paper are therefore almost surely quite biased, and the conclusions they draw from these estimates are not justified. Since the Hall and Wayman study is the only quantitative study attempting to measure the influence of campaign contributions on "effort" in committee proceedings and markup, there is essentially *no* quantitative evidence that campaign contributions influence legislators' behavior in committee.

1.4. Campaign contributions and policy outcomes.

Ultimately, if campaign contributions are "buying policy" then we should see some effects on actual policy outcomes. In his expert report, Bok describes what he sees as three shortcomings of public policy in the U.S. relative to other leading democracies: (i) legislation in the U.S. is "comparatively incoherent," (ii) the U.S. regulatory system is "unusually contentious, expensive and time consuming," and (iii) U.S. "laws are consistently less favorable to those of poor and working poor people." He then asserts that: "Our campaign finance laws contribute significantly to all three of these shortcomings." [2 PCS ER 992]

This is a bold assertion, but I know of no studies that make a convincing case that it is true. In fact, I know of no systematic cross-national studies published the academic campaign finance literature that even attempt to determine

[11] Quoted in course material by Richard Williams, found at the following URL: http://www.nd.edu/~rwilliam/xsoc593/index.html.

whether or not it is true. I know of only two published study of U.S. policy making that incorporates PAC contributions. Hansen and Park (1995) study antidumping and countervailing duty decisions by the International Trade Administration, and find that total PAC contributions by an industry typically have *no* effect on the industry's chances of obtaining a favorable decision. Golbe and Maggi (1999) study the pattern of trade protection, and estimate that the implicit weight the government places on campaign contributions is tiny compared to the implicit weight it places on social welfare.

I conducted a modest analysis at the state level, and also failed to find any evidence that campaign contributions or campaign finance laws affect public policy across U.S. states. I wanted to examine all three of Bok's criticisms of U.S. policy, but was only able to find a good measure of item (iii) – laws regarding the "poor and working poor people." The measure is the Erikson, *et al.* (1993) index of state policy "liberalism" circa 1980, which I call the *State Policy Liberalism Index*. It is constructed from seven policy measures, most of which include a clear element of redistribution from the well-off to the less-well-off. The seven measures are: (1) state educational expenditures per pupil, (2) scope of eligibility for Medicaid assistance, (3) scope of eligibility for AFDC, (4) a scale of state tax progressivity, (5) a scale of state consumer legislation, (6) a scale of criminal justice restrictions, and (7) state support of the Equal Rights Amendment.[12]

I merged data from three careful studies – Erikson, *et al.* (1993), Beyle and Jensen, and Malbin and Gais (1998) – and conducted the following straightforward regression analysis.

[12] See Erikson, *et al.* (1993), pp. 75-77. The scores are taken directly from Table 4.2 on p. 77. I include all states Erikson *et al.* included in their regression analyses, so Alaska, Hawaii and Nevada are dropped.

The dependent variable is the policy liberalism index described in the previous paragraph. One key control variables is *State Opinion Liberalism*, also taken from Erikson, *et al.* (1993).[13] This variable is based on public opinion polls and Erikson, *et al.* (1993) find it to be an extremely important predictor of state policy liberalism in their analyses. Another control variable is *Per Capita Income*, which I obtained from the Bureau of Economic Analysis.

The main independent variables of interest are *Total Campaign Spending Per Capita*, and *Contribution Limit Index*. The first of these is from Beyle and Jensen. It is the average per-capita campaign spending in gubernatorial races (total spending by all candidates in race) held during the period 1976-1984. I chose the period because it straddles 1980. The second of these is an index of how stringent each state's campaign finance laws were in 1980, and is from Malbin and Gais (1998). The variable is defined as follows: Contribution Limit Index = 2 if a state limits contributions from individuals, PACs, and parties; Contribution Limit Index = 1 if a state limits contributions from some source but not all three; and Contribution Limit Index = 0 if state has no limits on contributions from any of the sources.[14] I also constructed two dummy variables from the campaign finance laws: *Individual and/or PAC Contribution Limit*, which is 1 if a state limited individual contributions [2 PCS ER 993] and/or PAC contributions but not party contributions and 0 otherwise; and *Individual, PAC, and Party Contribution Limit*, which is 1 if a

[13] See Erikson, *et al.* (1993), pp. 16-19. The scores are taken directly from Table 2.2 on p. 16.

[14] See Malbin and Gais (1998), pp 17-19. The index is calculated directly from Tables 2-2, 2-3 and 2-4. I experimented with a number of different indexes – *e.g.*, Contribution Limit Index = 1 if a state limits contributions from individuals, PACs, and parties; and Contribution Limit Index = 0 otherwise – and the results were all similar to those shown in Table 3.

state limited all three types of contributions and 0 otherwise.[15]

Table 3: Effect of Campaign Spending and Campaign Finance Laws on State Policy Liberalism Dependent Variable = State Policy Liberalism Index			
Total Campaign Spending Per Capita	-0.07 (-0.80)	–	–
Contribution Limit Index	–	0.05 (0.68)	–
Individual and/or PAC Contribution Limit	–	–	0.01 (0.12)
Individual, PAC, and Party Contribution Limit	–	–	0.06 (0.77)
State Opinion Liberalism	0.64** (6.01)	0.62** (5.80)	0.61** (5.70)
Per Capita Income	0.26* (2.40)	0.30** (2.79)	0.32** (2.91)
R-square	.73	.73	.73
Number of observations	47	47	47
All coefficients are standardized. t-statistics in parentheses. * = statistically significant at the .05 level ** = statistically significant at the .01 level			

As the table shows, the estimated effect of total campaign spending on the policy liberalism index is small and statistically insignificant.[16] The same is true for the campaign

[15] All states that limited party contributions also had limits on individual and PAC contributions.

[16] The raw correlations are also low: the correlation between the policy liberalism index and per capita campaign spending is just -.16, and the correlation between policy liberalism and the contribution limit index is just .05 (neither are statistically significant). Taking natural of the independent variables and/or dependent variables does not change the basic

contribution limit index. The effects of the separate campaign finance law variables are also small and insignificant. In particular, there is no evidence that laws restricting political party contributions in addition to other types of contributions have any effect on overall policy liberalism.

Two examples reinforce the point. California and Oregon had two of the least restrictive campaign finance regulation systems in 1980, but the 3rd and 4th highest policy liberalism indexes, respectively. (California also had the 2nd highest level of per-capita welfare spending of any state.) Thus, these states exhibit exactly the *opposite* of the pattern Bok asserts: very lenient campaign finance regulations, but relatively favorable public policies for the poor and working poor.

To summarize, there are almost no quantitative studies attempting to estimate the effect of campaign contributions or campaign finance laws on actual *policy outputs* (as opposed to roll-call voting or legislative effort). The two published studies noted above on federal trade protection find [2 PCS ER 994] insignificant and/or tiny effects of campaign contributions on trade policies. My state-level analysis finds *no* significant effects of campaign contributions or campaign laws on overall state policy liberalism.

1.5. Parties and political influence.

Most of the discussion above is about the influence interest group campaign contributions might or might not have on individual candidates or politicians. One exception is section 1.4, where I discuss the aggregate impact of contributions and campaign finance regulations on policy outcomes. I did not propose a precise mechanism by which contributions or campaign finance laws might affect policy, so

results or conclusions.

it is possible that the mechanism could involve political parties. Since the estimated effects were small and statistically insignificant, however, the point is moot – overall, policy does not appear to be affected either by the aggregate level of campaign contributions or by the presence or absence of laws restricting such contributions. Another exception is section 1.5, where I point out that since parties are *collections* of politicians, activists, and supporters that have different views on many issues – *i.e.*, the parties have relatively "big tents" – it is not surprising to see the same interest group, or even the same individual, give to candidates from both parties or committees from both parties.

There are many remaining questions regarding the role of parties. Two particularly important questions are: (1) Do political parties help "insulate" candidates and politicians from interest group pressures? (2) Do parties themselves act as "umbrella associations" for interest group money – *e.g.*, by raising money from groups and then transferring it to party members who are "loyal" to the party leadership on the issues of concern to these groups?

With respect to (1), there is some evidence from state-level research that interest groups tend to be stronger where parties are weaker. Morehouse (1981) and Zeigler (1983) classified states in terms of the strength of their political parties and the strength of their pressure groups. They both found a strong *negative* correlation between the two measures.[17] States with weaker parties tended to have stronger interest groups. There is also at least one good theoretical reason to suspect that the answer to question (1) is "Yes." Inside the legislature, strong and active party caucuses make *collective* decisions about what policies to support, and the process of collective deliberation is likely to reduce the influence of any one interest

[17] See Morehouse (1981), p. 117, Table 3-4, and the discussion on pp. 116-118. Also see Zeigler (1983), p. 116, Table 4.7.

group. It is possible that this collective decision- making process could be emulated by a more decentralized system where, say, each committee acts as a miniature deliberative body. However, such a system is likely to be much worse than party caucuses at making *trade-offs* across issues, and some committees in the system with narrow jurisdictions would be prone to "capture" by particular interest groups.

With respect to (2), I am aware of three relevant studies. Leyden and Borrelli (1990, 1994), and Cantor and Herrnson (1997) study the relationship between party contributions to candidates and roll-call-based measures of party "loyalty." Leyden and Borrelli (1990) find a positive correlation between party contributions and loyalty for Democrats, but not for Republicans. Cantor and [2 PCS ER 995] Herrnson (1997) find *no* significant relationships for either party. They summarize their regression results as follows: "past party unity has no significant effect on the distribution of party assistance in campaign fundraising." Instead, party contributions are driven almost exclusively by how close a candidate's race is. Finally, Leyden and Borrelli (1994) claim to find some evidence that party contributions actually influence members' roll-call voting. However, this paper does not adequately control for the "baseline" degree of loyalty, that is, how members would have voted in the absence of party contributions. That is, the paper suffers from the same two problems that plague the vast majority of studies trying to estimate the independent effect of interest group contributions on roll-call voting (recall 1.2 above).

2. Voter Turnout

2.1. Has the increase in "impersonal" voter contact reduced turnout?

In his report, Donald Green argues that parties have shifted away from face-to-face communication toward media-

based communication, and this has led to a decline in turnout: "I have argued elsewhere that this decline in personal contact between campaigns and voters, as distinct from impersonal contacts by way of mass media, mail, or commercial phone banks – accounts for the long-term decline in voter turnout that the U.S. experienced since the 1960s" (p. 35). Jonathan Krasno and Frank Sorauf also argue that turnout has declined in recent years, even as soft money has risen, and this shows that soft money has not helped mobilize voters or build parties (p. 17).

There are two problems with these arguments. First, in a recent paper published in the *American Political Science Review*, McDonald and Popkin (2001) argue convincingly that turnout has *not* declined over the past 30 years. Rather, the population of eligible voters has shrunk, due to increases in the relative proportion of non-citizens, felons, and other disenfranchised groups. Measured as a fraction of the eligible population, turnout in the 2000 presidential election was almost exactly the same as it was in the 1976 election, 56.9% vs. 57.1%. McDonald and Popkin also argue that turnout in the 1950s and 1960s was "quite unusual for the period after the weakening of political machines." They show that turnout in 1948 (as a percentage of the eligible population) was the *lowest* of all post-war elections, and note that Burnham (1987) also finds low turnout levels over the period 1920-1948: "[Burham's] results show that voter participation through 1948 is strikingly similar to the turnout rate after 1972" (McDonald and Popkin, 2001, p. 967). This suggests either that the level of "personal contact" has little to do with turnout, or that there was little personal contact in campaigning even during the pre-war period.

Second, in a series of field experiments Green and Gerber (2000, 2001a, 2002b) show that even "impersonal" contacts via telephone canvassing and direct mail can

significantly increase turnout.[18] In two of the studies, they found that phone calls had *no* significant effect on turnout ("1998 Connecticut Congressional & State Elections, Study I" in West Haven and "1998 Connecticut Congressional & State Elections, Study II" in New Haven). However, in a third study they found [2 PCS ER 996] that phone canvassing had an average treatment effect of 5 percentage points ("2000 Multi-City Study" on youth voter mobilization). That is, on average, each 100 phone calls increased turnout by 5 votes. Gerber and Green point out that the different results may be due to differences in the nature of the calls – the first two studies used commercial callers, while the third used young callers and an informal, "chatty" style. Another possibility is that the first two studies had methodological flaws. Imai (2002) argues that there was incomplete randomization of the treatment assignment in the Gerber and Green New Haven study ("1998 Connecticut Congressional & State Elections, Study II" in New Haven), as well as miscoding of the data, leading to improper inferences. He reanalyzes the data and finds that telephone canvassing increased turnout by 5 percent.

Non-partisan direct mail also had statistically significant turnout effects. Gerber and Green (2000) estimate that direct mail raises turnout by 0.6 percentage points per mailing, at least for the first 3 mailings ("1998 Connecticut Congressional & State Elections" in New Haven). Moreover, based on his reanalysis of their data, Imai (2002) argues that the effect of three mailings is even larger than Gerber and Green's estimate.[19]

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[18] The URL's of the Yale Civic Engagement Project and the Center for Information & Research on Civic Learning and Engagement summarize the findings from this work. For example, see URL: http://www.puaf.umd.edu/CIRCLE/whats_new/whatsnew_outside7.htm, and linked pages.

[19] On the other hand, in two others studies they found that partisan mailings had no statistically significant effect on turnout ("1999

Gerber and Green (2000) find that door-to-door canvassing has large effects on voter turnout – an average treatment effect of about 9-10 percentage points, depending on the study. Based on some straightforward calculations, they then argue that door-to-door canvassing is by far the most cost-effective way of producing turnout. These calculations are incorrect, however, if the actual average treatment effect of phone canvassing is 5 percentage points – which is what Gerber and Green found in their youth studies, and what Imai calculates after reanalyzing the data from Gerber and Green's West Haven and New Haven Studies. In fact, phone canvassing might be just as effective on a per-dollar basis. For example, the California Democratic Party estimates that they pay about $9 per hour for door-to-door canvassers and about $11 per hour for phone canvassers. (These comparative costs do not reflect additional costs that increase the over-all expense of door-to-door canvassing such as food, transportation, the cost of literature, higher training and supervision costs, and other liability-related costs.) Party officials estimate that door-to-door canvassers can contact about 8 households per hour and phone canvassers can contact about 12 households per hour, and experienced phone canvassers can contact 20 households per hour. Multiplying these figures, door-to-door canvassing produces an average of 8.0 votes per $100, while phone canvassing produces an average of 5.5 votes per $100, or even 9.1 votes per $100 for experienced phone canvassers. Even assuming that these numbers can vary somewhat depending upon variables such as time, place and the nature of the activity, it is apparent that the use of phone canvassers, particularly experienced phone canvassers, may be more cost effective (or

New Jersey State Assembly Race" and "1999 Connecticut Mayoral Campaign"). Unfortunately, since these were both odd-year elections, we cannot tell whether the divergent findings are due to the partisan tone of the messages or to special difficulties in mobilizing voters when there are no federal offices or statewide offices on the ballot.

as cost effective) as door-to-door canvassing in some circumstances. [2 PCS ER 997]

Thus, it is not obvious that the increased use of relatively "impersonal" contacts over the phone rather than "personal" contacts via door-to-door canvassing has led to a decline in voter turnout. Face-to-face contacts might be more effective on a *per contact* basis, but less effective on a *per dollar* basis. Moreover, if parties are using their resources efficiently, then we would hardly expect them to spend millions of dollars on phone calls if these contacts were clearly ineffective.

2.2. Would reducing party funds affect turnout?

What do the calculations in the previous paragraph imply about the possible effects of BCRA on turnout? Since political parties tend to conduct most of the get-out-the-vote activities that are done in the U.S., reducing the money available to parties could have a substantial impact on turnout.

In his report, Ray LaRaja estimates that each additional $100 in soft money results in an average of $8 spent on mobilization activities by Republican party committees and $22 by Democratic committees. Ansolabehere and Snyder (2002) obtained roughly similar figures ($16-$20) in their analysis of three states over the period 1992-1996. The Republican and Democratic parties each raised about $250 million in soft money in 2000. Using LaRaja's estimates, if two-thirds of this money was eliminated, then total spending on get-out-the-vote would fall by about $50 million.[20] If *all* of this money were eliminated, then total spending on get-out-the-vote would fall by about $75million.[21]

Suppose that each $100 in get-out-the-vote spending

[20] (.08+ 22) ´ (2/3) ´ 250 million = $50 million.
[21] (.08+ 22) ´ 250 million = $75 million.

produces 7 votes. This would seem to be a reasonable figure given the calculations in 2.1 above. In fact, it might even be too low since the calculations are based on the assumption that contacting is done *randomly*. Get-out-the-vote activities could even have a greater impact if the various types of contacts are made in an efficient manner.

If parties reduced their spending on get-out-the-vote by $50 million, then total turnout in the U.S. would drop by 3.5 million votes, or about 3.33% of the total vote in the 2000 presidential elections.[22] If they reduced their spending on get-out-the-vote by $75 million, then total turnout in the U.S. would drop by 5.25 million votes, or about 5% of the total vote in the 2000 presidential elections.

Dated: October 11, 2002

/s/
James M. Snyder, Jr.

[2 PCS ER 998]

[22] (7/100) ´ 50 million = 3.5 million votes. Total turnout in 2000 was about 105 million votes.

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[caption omitted]

[end of page 2]

ORDER CONSOLIDATING CASES

(April __ , 2002)

These cases come before the Court upon a suggestion to consolidate the three original cases by Defendants in all the matters and by Plaintiffs in the *McConnell* action. After reviewing the various filings in these matters, the Court has concluded, in its discretion, that the above-captioned cases shall be consolidated for all purposes pending further order of the Court. The Court has also designated the case *McConnell v. FEC* to be the lead case of this litigation.

Rule 42(a) provides, in pertinent part, that "[w]hen actions involving a common question of law or fact are pending before the court . . . it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. Fed. R. Civ. P. 42(a). As is apparent from the text of Rule 42(a), the decision to consolidate is discretionary. *See* 9 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2383 (2d ed. 1995 ("The district court is given broad discretion to decide whether consolidation would be desirable and the decision inevitably is contextual.").

Although it is not the usual practice for this Court to *sua sponte* order consolidation of cases, there is precedent from this District that such a practice is appropriate given the Court's wide latitude concerning case management. *In re Pepco Employment Litigation*, 1990 WL

[end of page 3]

236073, at *1 (D.D.C. Dec. 20, 1990) ("Although this circuit does not appear yet to have ruled on whether a court may *sua sponte* order consolidation, the court holds that the plain language of Rule 42(a) and the weight of authority give it the power to issue such an order.") (collecting cases); *see also*,

9 Wright and Miller, *supra*, § 2383 ("A motion is not required however, since the court may order consolidation on its own initiative."). Furthermore, as analogous precedent, the United States Court of Appeals for the District of Columbia Circuit has, by its own motion, ordered the consolidation of a number of related cases. *See, e.g., United States v. Pless*, 1998 WL 315516 (D.C. Cir. May 18, 1998); *Resolution Trust Corp. v. Cohen*, 1994 WL 191734 (D.C. Cir. May 10, 1994). Thus, the Court finds it acceptable to *sua sponte* order consolidation of these matters.

The Court finds persuasive reasons to consolidate these cases. All of these actions present constitutional challenges to the recently enacted Bipartisan Campaign Reform Act of 2002. As such, the challenges all involve common issues of law and fact. Moreover, the Act requires this Court to "advance on the docket and to expedite to the greatest possible extent the disposition of this action." Bipartisan Campaign Reform Act of 2002 § 403(a)(4), Pub. L. No. 107-155 (2002). Thus, consolidation makes sense to the extent that unnecessary costs and delays in the administration of these various actions will be avoided, thereby vindicating the political branches' desire to see this litigation advanced as quickly as justice permits.

While consolidation of cases is "permitted as a matter of convenience and economy in administration," *Johnson v. Manhattan Ry. Co.*, 289 U.S. 479, 496-97 (1933) (discussing 28 U.S.C. § 734, the predecessor statute to Fed. R. Civ. P. 42 (a)), consolidation "does not merge the suits into a single cause, or change the rights of the parties, or make those who are parties in one suit parties in another." *Id.*; *see also Cablevision Systems Development Co. v. Motion Picture*

[end of page 4]

Ass'n of America, Inc., 808 F.2d 133, 135-36 (D.C. Cir. 1987) (recognizing the holding in *Johnson*, but

distinguishing on the facts). As such the Court has the discretion to deconsolidate these cases at any time and also can issue orders that pertain only to one of the consolidated matters. The discretion provided by Rule 42 also permits the Court to allow the parties to raise issues that might be relevant only to one case.[1] Of course, where it is feasible, the Court expects that the parties will avoid overlapping and duplicative arguments. The advantage of consolidation from the Court's perspective is that when Plaintiffs need to raise an issue with the Court, they need only file one document with the Court and that document will be deemed filed in all matters. Thus, to the extent practical, the Court expects the parties to work together to ensure joint filings.

The three earliest filed cases have requested that the Court deem *McConnell v. FEC* the lead case. That motion, however, confuses the concept of a related case with a consolidated case. When cases are related, there is no concept of a "lead" case. The cases proceed independently and are merely heard before the same Court. Thus, to the extent that the *McConnell* case has been filed after the *NRA* matter, there is nothing the Court can do to renumber the cases and have the *McConnell* case proceed as if it were filed first. However, the Court can consolidate matters around a single action. It is the Court's intention, therefore, to consolidate matters around the *McConnell* action, pursuant

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[1]Plaintiffs in *NRA v. FEC* and *Echols v. FEC* had argued in an earlier filing that they opposed consolidation. At oral argument on April 23, 2002, setting forth a scheduling motion in this action, counsel for Plaintiffs in these actions indicated that they would not oppose consolidation if they were permitted the opportunity to file their own brief and make their own presentation at oral argument. The Court agreed to this request.

to the spirit of this request.
[end of page 5]

Accordingly, it is, this [24] of April, 2002, hereby

ORDERED that the court *sua sponte* consolidates *NRA v. FEC*, Civil Action No. 02-cv-581, *Echols v. FEC*, Civil Action No. 02-cv-633, *Chamber of Commerce v. FEC*, Civil Action No. 02-cv-751, *NAB v. FEC*, Civil Action No. 02-cv-753, *AFL-CIO v. FEC*, Civil Action No. 02-cv-754, and *Paul v. FEC*, Civil Action No. 02-cv-781, with *McConnell v. FEC*, Civil Action No. 02-cv-582 for all purposes; it is further

ORDERED that all filings for *NRA v. FEC*, Civil Action No. 02-cv-581, *Echols v. FEC*, Civil Action No. 02-cv-633, *Chamber of Commerce v. FEC*, Civil Action No. 02-cv-751, *NAB v. FEC*, Civil Action No. 02-cv-753, *AFL-CIO v. FEC*, Civil Action No. 02-cv-754, and *Paul v. FEC*, Civil Action No. 02-cv-781, must be filed in *McConnell v. FEC*, Civil Action No. 02-cv-582 .

SO ORDERED.

[subscription and signature omitted]

[caption omitted]

SCHEDULING AND PROCEDURES ORDER

It is this [24] day of April, 2002

ORDERED that the parties shall adhere to the following schedule, bearing in mind the effective date of the Bipartisan Campaign Reform Act of 2002 and the mandate in section 403 thereof that: "It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal."

[end of page 1]

April 24, 2002 Begin general discovery.

May 5, 2002 Deadline for amendment of pleadings, intervention or joinder of additional parties and consolidation of additional cases.

May 27, 2002 Deadline for filing answers.

August 26, 2002 Deadline for exchange of document requests interrogatories and requests to admit.

September 18, 2002 Deadline for service of deposition notices.

September 30, 2002 End of discovery.

October 4, 2002 Begin period for cross-examination of fact and expert witnesses. Deadline to exchange fact witness affidavits.

October 14, 2002 Deadline to serve rebuttal affidavits, expert reports and documentary evidence.

October 25, 2002 End period for cross-examination of fact and expert witnesses.

November 4, 2002 Deadline for filing of opening briefs in support of judgment, accompanied by fact witness and expert testimony and documentary evidence.

November 15, 2002 Deadline for filling opposition briefs.

November 25, 2002 Deadline for filing reply briefs.

December 4, 2002 Oral argument.

Counsel are advised that the above schedule is firm.

Counsel are referred to Local Rule LCvR 26.2 and expected to fully conform with its directives. Moreover, counsel are required, under both Federal Rule of Civil

[end of page 2]

Procedure 26(f) and Local Rule LCvR 7.1(m), to confer in good faith in an effort to resolve any discovery dispute before bringing it to the court's attention.

Nothing in this order precludes any party from filing motions for summary judgment, in whole or in part, at the appropriate time. The parties shall comply fully with Local Rule LCvR 7.1(h), otherwise the submission will be stricken. Additionally, each submission must be accompanied by a table of cases and other authority cited therein. The parties are strongly encouraged to carefully review *Jackson v. Finnegan, Henderson, Farabow, Garrett & Dunner, et al.*, 101 F.3d 145 (D.C. Cir. 1996), on the subject of Local Rule LCvR 7.1(h), formerly Rule 108(h).

SO ORDERED.

[subscription and signature omitted]

[caption omitted]

[end of page 3]

ORDER CONSOLIDATING CASES

(May [13], 2002)

Four cases have recently been filed with the Court challenging the Bipartisan Campaign Reform Act of 2002 ("BCRA"). All of these cases, *RNC v. FEC*, *CDP v. FEC*, *Adams v. FEC*, and *Thompson v. FEC* have requested that the Court consolidate their actions around *McConnell v. FEC*, the lead case in a seven action challenge to the BCRA. *See McConnell v. FEC*, No. 02-582 (D.D.C. April 24, 2002) (order consolidating seven cases challenging the BCRA). After reviewing the various filings in these matters, the Court has concluded, in its discretion, that *RNC v. FEC*, *CDP v. FEC*, *Adams v. FEC*, and *Thompson v. FEC* shall be consolidated with *McConnell v. FEC* for all purposes pending further order of the Court.

[end of page 4]

Rule 42(a) provides, in pertinent part, that "[w]hen actions involving a common question of law or fact are pending before the court . . . it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. Fed. R. Civ. P. 42(a). As is apparent from the text of Rule 42(a), the decision to consolidate is discretionary. *See* 9 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2383 (2d ed. 1995 ("The district court is given broad discretion to decide whether consolidation would be desirable and the decision inevitably is contextual.").

The Court finds persuasive reasons to consolidate these four cases with the seven cases already consolidated around *McConnell v. FEC*. All four of the actions present constitutional challenges to the recently enacted BCRA. As such, the challenges all involve common issues of law and

fact. Moreover, the Act requires this Court to "advance on the docket and to expedite to the greatest possible extent the disposition of this action." Bipartisan Campaign Reform Act of 2002 § 403(a)(4), Pub. L. No. 107-155 (2002). Thus, consolidation makes sense to the extent that unnecessary costs and delays in the administration of these various actions will be avoided, thereby vindicating the political branches' desire to see this litigation advanced as quickly as justice permits.

While consolidation of cases is "permitted as a matter of convenience and economy in administration," *Johnson v. Manhattan Ry. Co.*, 289 U.S. 479, 496-97 (1933) (discussing 28 U.S.C. § 734, the predecessor statute to Fed. R. Civ. P. 42 (a)), consolidation "does not merge the suits into a single cause, or change the rights of the parties, or make those who are parties in one suit parties in another." *Id.*; *see also Cablevision Systems Development Co. v. Motion Picture Ass'n of America, Inc.*, 808 F.2d 133, 135-36 (D.C. Cir. 1987) (recognizing the holding in *Johnson*, but distinguishing on the facts). As such the Court has the discretion to deconsolidate

[end of page 5]

these cases at any time and also can issue orders that pertain only to one of the consolidated matters. The discretion provided by Rule 42 also permits the Court to allow the parties to raise issues that might be relevant only to one case.[1] Of course, where it is feasible, the Court expects that

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[1]Plaintiffs in *NRA v. FEC* and *Echols v. FEC* had argued in an earlier filing that they opposed consolidation. At oral argument on April 23, 2002, setting forth a scheduling motion in this action, counsel for Plaintiffs in these actions indicated that they would not oppose consolidation if they were permitted the opportunity to file their own brief and

the parties will avoid overlapping and duplicative arguments. The advantage of consolidation from the Court's perspective is that when Plaintiffs need to raise an issue with the Court, they need only file one document with the Court and that document will be deemed filed in all matters. Thus, to the extent practical, the Court expects the parties to work together to ensure joint filings.

Accordingly, it is, this [10] of May, 2002, hereby

ORDERED that the Motion for Consolidation [#4] filed in *RNC v. FEC*, Civil Action No. 02cv874, is GRANTED; it is further

ORDERED that *RNC v. FEC*, Civil Action No. 02cv874, is consolidated with *McConnell v. FEC*, Civil Action No. 02cv582, for all purposes; it is further

ORDERED that the Consent Motion for Consolidation [#6] filed in *CDP v. FEC*, Civil Action No. 02cv875, is GRANTED; it is further

ORDERED that *CDP v. FEC*, Civil Action No. 02cv875, is consolidated with *McConnell v. FEC*, Civil Action No. 02cv582, for all purposes; it is further

ORDERED that the Motion for Consolidation [#3] filed in *Adams v. FEC*, Civil Action No. 02cv877, is GRANTED; it is further

ORDERED that *Adams v. FEC*, Civil Action No. 02cv877, is consolidated with *McConnell v. FEC*, Civil Action No. 02cv582, for all purposes; it is further

ORDERED that the Motion for Consolidation of Cases [#4] filed in *Thompson v. FEC*, Civil Action No. 02cv881, is GRANTED; it is further

[end of page 6]

ORDERED that *Thompson v. FEC*, Civil Action No.

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make their own presentation at oral argument. The Court agreed to this request.

02cv881, is consolidated with *McConnell v. FEC*, Civil Action No. 02cv582, for all purposes; it is further

ORDERED that all filings for *RNC v. FEC*, Civil Action No. 02cv874, *CDP v. FEC*, Civil Action No. 02-875, *Adams v. FEC*, Civil Action No. 02cv877, and *Thompson v. FEC*, Civil Action No. 02-881 be filed in *McConnell v. FEC*, 02cv582; it is further

ORDERED that Plaintiffs in *RNC v. FEC*, Civil Action No. 02cv874, *CDP v. FEC*, Civil Action No. 02-875, *Adams v. FEC*, Civil Action No. 02cv877, and *Thompson v. FEC*, Civil Action No. 02-881, are to promptly familiarize themselves and comply with the Scheduling and Procedures Order issued April 24, 2002, by this Court in the previously consolidated matters; attached as an exhibit hereto.

SO ORDERED.

[subscription, signature and attachment omitted]

[caption omitted]

RESPONSES AND OBJECTIONS OF DEFENDANT FEDERAL ELECTION COMMISSION TO THE FIRST INTERROGATORIES BY THE ECHOLS PLAINTIFFS

[prefatory matter omitted]

GENERAL OBJECTIONS

[General objections omitted]

[end of page 1]
[end of page 2]
[end of page 3]
[end of page 4]

Subject to and without waiving any of the foregoing General Objections, which are hereby incorporated into each response given below, the Commission responds to the Interrogatories from the Echols plaintiffs as follows:

FIRST INTERROGATORIES

1. If you contend that there are any governmental interests that justify the ban on contributions by minors to candidates, please state and describe each such governmental interest in detail.

Response: The Commission objects to this request: (a) to the extent that this request seeks the discovery of facts, such as BCRA's legislative history, that are contained in publicly available sources such as the Congressional Record which are equally available to plaintiffs and are not within the custody or control of the Commission; and (b) to the extent that this request seeks to compel the production of purely legal opinions. The Commission also objects to this request because it calls for a legal opinion.

Notwithstanding the foregoing objections, the Commission notes that BCRA was enacted to advance more effectively the governmental interests and purposes already being addressed by the Federal Election Campaign Act of 1971, as

amended, 2 U.S.C. 431 et seq. (the "Act" or "FECA"). Like the FECA, BCRA addresses the opportunity for, and appearance of, corruption that the Supreme Court has found inherent in the system of private campaign financing. "To the extent that large contributions are given to secure a political quid pro quo from current and potential office holders, the integrity of

[end of page 5]

our system of representative democracy is undermined.... Of almost equal concern as the danger of actual quid pro quo arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions." Buckley v. Valeo, 424 U.S. 1, 26 – 27 (1976). Thus, there is a "'compelling' governmental interest in assuring the electoral system's legitimacy, protecting it from the appearance and reality of corruption." Colorado Republican Federal Campaign Committee v. FEC, 518 U.S. 604, 609 (1996). The ban on gifts by minors serves the important governmental interest of foreclosing circumvention of the statutory limits on individual campaign contributions by parents or guardians who may have legal control over minors.

2. For each such governmental interest stated and described by you in response to Interrogatory No. 1 above, if you contend that the existence of the interest is supported by any fact, state and describe each such fact relevant to determining the existence of such an interest.

Response: The Commission objects to this Interrogatory as overly burdensome to the extent that it requests the production of information already contained in the legislative history of the BCRA, which is as easily accessible to these plaintiffs as it is to the Commission. Pursuant to Fed. R. Civ. P. 33(d), because the answer to this Interrogatory can be

ascertained from an examination, audit or inspection of the business records of the Commission, and the burden of deriving the answer is substantially the same for plaintiffs and for the Commission, the Commission specifies that relevant information in the Commission's possession may be contained in the following closed MURs: 3268, 4208, and 4484, which are available for inspection in the Commission's public reading room.

[end of page 6]

3. For each such governmental interest stated and described in response to Interrogatory No. 1, above, state and describe each such fact that manifests reliance by the United States Congress on such interest when the Congress considered and enacted the ban on contributions by minors to candidates.

Response: The Commission objects to this Interrogatory as overly burdensome to the extent that it requests the production of information already contained in the legislative history of the BCRA, which is as easily accessible to these plaintiffs as it is to the Commission. The Commission also objects to this request on vagueness grounds because the request is ambiguous and vague on whether it seeks information with respect to each member of Congress, the Senate as a whole, the House of Representatives as a whole, or from Congress as a whole.

4. Identify each source of the information that you provide in response to Interrogatories 2 and 3, above, giving for each such item the name, address, and telephone number of each human source, the title, date, author, and page number of each published source, and comparable detail for each other source. **Response:** The Commission objects to this interrogatory on attorney work product grounds. By seeking to compel the Commission to reveal at this early stage every document on which the Commission

may rely, plaintiffs will receive information relating to the opinion work product of the Commission's attorneys; moreover, providing plaintiffs with the FEC's mental impressions, conclusions, opinions, and legal theories that may later be abandoned and never made part of the Commission's case will lay bare much of its strategies, tactics and other opinion work product. The Commission also incorporates by reference its responses to Interrogatory numbers 2 and 3 above.

5. If you contend that there are any governmental interests that justify the ban on contributions or donations by minors to committees of political parties, please state and describe each such governmental interest in detail.

Response: See response to Interrogatory number 1 above.

[end of page 7]

6. For each such governmental interest stated and described by you in response to Interrogatory No. 5, above, if you contend that the existence of the interest is supported by any fact, state and describe each such fact relevant to determining the existence of such an interest.

Response: See response to Interrogatory number 2 above.

7. For each such governmental interest stated and described in response to Interrogatory No. 5, above, state and describe each such fact that manifests reliance by the United States Congress on such interest when the Congress considered and enacted the ban on contributions or donations by minors to committees of political parties.

Response: See response to Interrogatory number 3 above.

8. Identify each source of the information that you provide in response to Interrogatories 6 and 7, above, giving for each such item the name, address, and telephone number of each

human source, the title, date, author, and page number of each published source, and comparable detail for each other source. **Response:** See response to Interrogatory numbers 2 and 3 above.

9. If you contend that Congress considered and rejected any alternatives to a ban on contributions by minors to candidates, please state and describe each such alternative that the United States Congress considered and rejected, specifying as to each alternative the grounds on which Congress rejected the alternative.

Response: The Commission objects to this request (a) to the extent that it seeks the discovery of facts such as BCRA's legislative history, that are contained in publicly available sources such as the Congressional Record which are equally available to plaintiffs and are not within the custody or control of the Commission; and (b) to the extent that this request seeks to compel the production of purely legal opinions. Indeed, the extent to which Congress considered or rejected various alternatives can best be ascertained from the legislative history and not from any information that might be in the possession and control of the Commission. Nor is the Commission under any obligation under federal rules to review these publicly available sources on plaintiffs' behalf. The Commission also objects to this request on vagueness grounds because the request is

[end of page 8]

ambiguous and vague on whether it seeks information with respect to each member of Congress, the Senate as a whole, the House of Representatives as a whole, or from Congress as a whole.

10. State and describe each such fact relevant to whether and to what extent the alternatives that you identify in response to Interrogatory 9 would achieve the interests that the ban on contributions by minors to candidates seeks to

achieve, specifying to which alternative each such item relates.

Response: See response to Interrogatory number 9.

11. Identify the sources of the information that you provide in response to Interrogatory 10, giving, for each such fact, the name, address, and telephone number of each human source, the title, date, author, and page number of each published source, and comparable detail for each other source.

Response: See response to Interrogatory number 9.

12. If you contend that Congress considered and rejected any alternatives to a ban on contributions or donations by minors to committees of political parties, please state and describe each such alternative that the United States Congress considered and rejected, specifying as to each alternative the grounds on which Congress rejected the alternative.

Response: See response to Interrogatory number 9. In addition, the Commission also objects to this interrogatory on the ground that responding to any contention interrogatory calling for the application of alleged facts to the potentially applicable law at this early stage in the discovery process is premature.

13. State and describe each such fact relevant to whether and to what extent the alternatives that you identify in response to Interrogatory 12 would achieve the interests that the ban on contributions or donations by minors to committees of political parties seeks to achieve, being specific as to the alternatives to which each such item relates.

Response: See response to the preceding Interrogatory.

14. Identify the sources of the information that you provide in response to Interrogatory 12, giving, for each such fact, the name, address, and telephone number of each human source, the title, date, author, and page number of

each published source, and comparable detail for each other source.

Response: See response to Interrogatory number 12.

[end of page 9]

15. Identify each person whose lay or expert testimony you expect to offer, stating the person's name, address, and telephone number, and summarizing the expected testimony of each such person.

Response: The Commission objects to this Interrogatory on attorney work product grounds to the extent that plaintiffs are seeking information about expert testimony that the Commission may consider but ultimately not offer in this litigation. By seeking to compel the Commission to reveal at this early stage every witness or expert on whom the Commission may rely, contrary to the Court's Scheduling Order which explicitly provides that the parties shall exchange expert reports upon which they do rely on October 4, 2002, plaintiffs are attempting to receive prematurely information relating to opinion work product of the Commission's attorneys.

16. State and explain in detail the construction that you advocate with respect to the ban on contributions by minors to candidates, and any alternative construction of the ban that you consider to be an alternative to invalidation of it.

Response: The Commission objects to this Interrogatory on grounds of vagueness. In addition, notwithstanding this objection, the Commission is conducting rule-making proceedings, pursuant to the provisions of the BCRA, which will determine how the Commission interprets the provisions of the BCRA.

17. State and explain in detail the construction that you advocate with respect to the ban on contributions or donations by minors to committees of political parties, and any alternative construction of the ban that you consider to

be an alternative to invalidation of it.

Response: See response to the preceding Interrogatory.

18. Identify and describe each legislative finding that justifies Section 318, Title III, of the Bipartisan Campaign Reform Act of 2002, specifying the precise statutory provision or other legislative materials that establish each such finding.

[end of page 10]

Response: The Commission objects to this request (a) to the extent that this request seeks the discovery of facts, such as BCRA's legislative history, that are contained in publicly available sources such as the Congressional Record which are equally available to plaintiffs and are not within the custody or control of the Commission; and (b) to the extent that this request seeks to compel the production of purely legal opinions. The FEC also notes that plaintiffs can determine for themselves from a review of the legislative history which statutory provisions are supported by specific individual legislative findings as easily as the Commission can.

19. Identify by name each present member of Congress and other elected federal officer who has engaged in any corrupt act as a result of contributions by minors to candidates or contributions or donations by minors to committees of political parties.

Response: The Commission has not alleged in this litigation that individual members of Congress or specific elected federal officers have engaged in any particular corrupt acts as a result of contributions by minors to candidates or to political parties. Rather, like the FECA, BCRA addresses the opportunity for, and appearance of, corruption that the Supreme Court has found inherent in the system of private campaign financing. "To the extent that large contributions are given to secure a political quid pro

quo from current and potential office holders, the integrity of our system of representative democracy is undermined.... Of almost equal concern as the danger of actual quid pro quo arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions." Buckley v. Valeo, 424 U.S. 1, 26 – 27 (1976). Thus, there is a "'compelling' governmental interest in assuring the electoral system's legitimacy,

[end of page 11]

protecting it from the appearance and reality of corruption." Colorado Republican Federal Campaign Committee v. FEC, 518 U.S. 604, 609 (1996).

20. Describe and with particularity each such corrupt act, stating the name, address, and telephone number of each person who participated in or induced the act, the date of each act, the place where each such corrupt act occurred, and providing a detailed identification of each source of information relied upon.

Response: See response to the preceding Interrogatory.

21. Identify by name each present member of Congress and other elected federal officer as to whom there has been an appearance of corruption as a result of contributions by minors to candidates or contributions or donations by minors to committees of political parties.

Response: The Commission has not made any express finding to date that any current member of Congress has engaged in any particular activity giving rise to an appearance of corruption as a result of contributions by minors to candidates or political parties. See also response to Interrogatory number 1. The Commission also objects to this request as burdensome to the extent that this request seeks newspaper and magazine articles, and compilations of information that exist on the public record, the legislative

history or information that could easily be obtained by the plaintiffs from the information in the Commission's public files

22. Describe and with particularity each such appearance of corruption, providing names, dates, and places involved in each such appearance, a description of the circumstances giving rise to the appearance, and a detailed identification of each source of information relied upon.

Response: See response to the preceding Interrogatory.

[end of page 12]

[subscription and signature omitted]

[caption omitted]

RESPONSE AND OBJECTIONS OF THE ATTORNEY GENERAL TO ECHOLS PLAINTIFFS' FIRST SET OF INTERROGATORIES

[prefatory matter omitted]

GENERAL STATEMENT AND OBJECTIONS

[end of page 1]

[General objections omitted]

[end of page 2]

[end of page 3]

Subject to and without waiving any of the foregoing General Objections, which are hereby incorporated into each response given below, Defendant makes the following specific objections and responses to the Interrogatories:

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

1. If you contend that there are any governmental interests that justify the ban on contributions by minors to candidates, please state and describe each such government interest in detail.

OBJECTION: Defendant specifically objects to this Interrogatory insofar as it seeks discovery of legal arguments and relates to pure legal conclusions. Furthermore, the legislative record surrounding BCRA is a matter of public record and is equally available to the Plaintiffs as it is to Defendant. This Interrogatory, therefore, is unduly burdensome, invasive of counsel's mental impressions and conclusions, premature, not reasonably calculated to lead to the discovery of admissible evidence, and beyond the scope of the obligations imposed by the Federal Rules of Civil Procedure.

ANSWER: Subject to and without waiving the foregoing general and specific objections, and without purporting to provide a complete list, Defendant identifies the following as

some of the governmental interests that justify the ban on contributions by minors to candidates:

a. Preventing circumvention of the legal limits on contributions to political parties and to candidates for federal office through transfers, donations, or expenditures of money that amount to disguised contributions.

b. Facilitating deterrence and detection of violations of the legal source and amount limitations on federal campaign contributions.

[end of page 4]

2. For each governmental interest stated and described by you in response to Interrogatory No. 1 above, if you contend that the existence of the interest is supported by any fact, state and describe each such fact relevant to determining the existence of such an interest.

OBJECTION: Defendant specifically objects to this Interrogatory because it is dependent on Interrogatory No. 1, which is itself objectionable. Defendant further objects to this Interrogatory as unduly burdensome, overbroad, invasive of counsel's mental impressions and conclusions, premature, unlikely to lead to the discovery of admissible evidence, and beyond the scope of the obligations imposed by the Federal Rules of Civil Procedure, because the legislative record surrounding BCRA is a matter of public record and is equally available to Plaintiffs as it is to Defendant.

Defendant further objects to this Interrogatory to the extent that it calls for information protected by the attorney-client privilege, the law enforcement privilege, the investigatory files privilege, the deliberative process privilege, the work product doctrine, the confidential informant privilege, or Federal Rule of Criminal Procedure 6(e). Defendant objects, in addition, to the extent this Interrogatory calls for information contained in confidential criminal investigative

files of the U.S. Department of Justice and calls for information provided to the U.S. Department of Justice subject to any agreement or commitment of confidentiality.

ANSWER: Subject to the foregoing objections, and without waiving them, Defendant responds, pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, that the Criminal Division of the United States Department of Justice has in its possession the following documents, obtained during the course of investigations conducted by the Campaign Financing Task Force, some of which may contain information responsive to this interrogatory:

Documents provided by the Campaign Financing Task Force to the Senate Committee on Governmental Affairs

[end of page 5]

Documents provided by the Campaign Financing Task Force to the Senate Committee on the Judiciary

Documents provided by the Campaign Financing Task Force to the House of Representatives Committee on Government Reform

Documents provided by the Campaign Financing Task Force to the House of Representatives Committee on the Judiciary

Public documents pertaining to United States v. Alampi

Public documents pertaining to United States v. Brown, No. 97-336 (RMU) (D.D.C.)

Public documents pertaining to United States v. Chang, No. 99-0029 (D.N.J.)

Public documents pertaining to United States v. Chu, No. 00-0122 (D.D.C.)

Public documents pertaining to United States v. Chung, No. 98-0230 (C.D. Cal.)

Public documents pertaining to United States v. Don

Public documents pertaining to United States v. Gandhi, No. 98-00222 (N.D. Cal.)

Public documents pertaining to United States v. Glicken, No. 98-240 (D.D.C.)

Public documents pertaining to United States v. Green, No. 01-446-01 (D.D.C.)

Public documents pertaining to United States v. Haney, No. 98-0383 (D.D.C.)

Public documents pertaining to United States v. Ho, No. 00-0122 (D.D.C.)

Public documents pertaining to United States v. Hsia, No. 98-57 (D.D.C.)

Public documents pertaining to United States v. Huang, No. 99-524 (C.D. Cal.)

Public documents pertaining to United States v. Jiminez, No. 98-0343 (D.D.C.) and No. 99-281 (S.D. Fla.)

Public documents pertaining to United States v. Kanchanalak, No. 98-0241 (D.D.C.)

Public documents pertaining to United States v. Koo

Public documents pertaining to United States v. Lee, No. 99-327 (C.D. Cal.)

Public documents pertaining to United States v. Lum (Nora), No. 97-0207 (D.D.C.)

[end of page 6]

Public documents pertaining to United States v. Lum (Trisha), No. 97-0208 (D.D.C.)

Public documents pertaining to United States v. Lum (Gene), No. 97-0207 (D.D.C.)

Public documents pertaining to United States v. Ortiz

Public documents pertaining to United States v. Penna, No. 99-0527 (D.N.J.)

Public documents pertaining to United States v. Riady

Public documents pertaining to United States v. Trie, No. 4:98 CR 00239-001 (E.D. Ark.)

Public documents pertaining to United States v. Yu, No. 99-726 (D.N.J.)

Public documents pertaining to United States v. Pan, No. 98-0029 (D.D.C.)

Pursuant to Rule 33(d), Defendant will afford counsel for the *Echols* plaintiffs, upon request, and subject to a suitable protective order, a reasonable opportunity to inspect and copy responsive documents, subject to compliance with the terms of any commitments that may have been made to parties that provided some or all of these documents to the United States to treat the documents confidentially, or to provide the parties in question with notice and an opportunity to object in advance of their disclosure.

Defendant further responds that the Criminal Division and the Federal Bureau of Investigation have together in their possession numerous documents, relating to investigations conducted by the Campaign Financing Task Force, which may contain evidentiary material responsive to this interrogatory. Except with respect to the specific categories of documents noted above, Defendant objects to this interrogatory insofar as it calls for the recitation or other disclosure of information contained in the confidential criminal investigative files of the Department of Justice. Defendant further objects to the recitation or other disclosure of information contained in these files on grounds of undue burden, and to the extent the materials in question are protected from disclosure by any privilege or rule cited above.

[end of page 7]

3. For each such governmental interest stated and described in response to Interrogatory No. 1, above, state and describe each such fact that manifests reliance by the United States Congress on such interest when the Congress considered and enacted the ban on contributions by minors to candidates.

OBJECTION: Defendant specifically objects to this

Interrogatory because it is dependent on Interrogatory No. 1, which is itself objectionable. Defendant further objects to this Interrogatory as unduly burdensome, overbroad, unlikely to lead to the discovery of admissible evidence, and beyond the scope of the obligations imposed by the Federal Rules of Civil Procedure in that it purports to require Defendant to catalogue each piece of information referenced in the legislative record of BCRA § 318 and any similar provisions in predecessor bills, which is a matter of public record and equally available to the plaintiffs as it is to Defendant.

4. Identify each source of the information that you provide in response to Interrogatories 2 and 3, above, giving for each such item the name, address, and telephone number of each human source, the title, date, author, and page number of each published source, and comparable detail for each other source.

OBJECTION: Defendant specifically objects to this Interrogatory because it is dependent on Interrogatory Nos. 2 and 3, which are themselves objectionable. Defendant also objects to this Interrogatory on the grounds that it only compounds the burdens imposed by Interrogatory Nos. 2 and 3. *See also* objections to Interrogatory No. 2, which are incorporated herein by reference.

ANSWER: *See* Answer to Interrogatory No. 2, which is incorporated herein by reference.

5. If you contend that there are any governmental interests that justify the ban on contributions or donations by minors to committees of political parties, please state and describe each such government interest in detail.

[end of page 8]

OBJECTION: Defendant specifically objects to this Interrogatory insofar as it seeks discovery of legal arguments and relates to pure legal conclusions. Furthermore, the legislative record surrounding BCRA is a matter of public

record and is equally available to the Plaintiffs as it is to Defendant. This Interrogatory, therefore, is unduly burdensome, invasive of counsel's mental impressions and conclusions, premature, not reasonably calculated to lead to the discovery of admissible evidence, and beyond the scope of the obligations imposed by the Federal Rules of Civil Procedure.

ANSWER: Subject to and without waiving the foregoing general and specific objections, and without purporting to provide a complete list, Defendant identifies the following as some of the governmental interests that justify the ban on contributions by minors to political parties:

a. Preventing circumvention of the legal limits on contributions to political parties and to candidates for federal office through transfers, donations, or expenditures of money that amount to disguised contributions.

b. Facilitating deterrence and detection of violations of the legal source and amount limitations on federal campaign contributions.

6. For each governmental interest stated and described by you in response to Interrogatory No. 5, above, if you contend that the existence of the interest is supported by any fact, state and describe each such fact relevant to determining the existence of such an interest.

OBJECTION: Defendant specifically objects to this Interrogatory because it is dependent on Interrogatory No. 5, which is itself objectionable. *See also* Objections to Interrogatory No. 2, which are incorporated herein by reference.

ANSWER: *See* Answer to Interrogatory No. 2, which is incorporated herein by reference.

[end of page 9]

7. For each such governmental interest stated and described in response to Interrogatory No. 5, above, state and

describe each such fact that manifests reliance by the United States Congress on such interest when the Congress considered and enacted the ban on contributions or donations by minors to committees of political parties.

OBJECTION: Defendant specifically objects to this Interrogatory because it is dependent on Interrogatory No. 5, which is itself objectionable. Defendant further objects to this Interrogatory as unduly burdensome, overbroad, unlikely to lead to the discovery of admissible evidence, and beyond the scope of the obligations imposed by the Federal Rules of Civil Procedure in that it purports to require Defendant to catalogue each piece of information referenced in the legislative record of BCRA § 318 and any similar provisions in predecessor bills, which is a matter of public record and equally available to the plaintiffs as it is to Defendant.

8. Identify each source of the information that you provide in response to Interrogatories 6 and 7, above, giving for each such item the name, address, and telephone number of each human source, the title, date, author, and page number of each published source, and comparable detail for each other source.

OBJECTION: Defendant specifically objects to this Interrogatory because it is dependent on Interrogatory Nos. 6 and 7, which are themselves objectionable. Defendant also objects to this Interrogatory on the grounds that it only compounds the burdens imposed by Interrogatory Nos. 6 and 7. *See also* objections to Interrogatory No. 6, which are incorporated herein by reference.

ANSWER: *See* Answer to Interrogatory No. 6, which is incorporated herein by reference.

9. If you contend that Congress considered and rejected any alternatives to a ban on contributions by minors to candidates, please state and describe each such alternative that the United States Congress considered and rejected,

specifying as to each alternative the grounds on which Congress rejected the alternative.
[end of page 10]

OBJECTION: Defendant specifically objects to this Interrogatory because the legislative record surrounding BCRA § 318 and any similar provisions in predecessor bills, in which alternatives to the enacted provisions might be discussed, is a matter of public record and is equally available to the Plaintiffs as it is to Defendant. This Interrogatory, therefore, is unduly burdensome, invasive of counsel's mental impressions and conclusions, premature, not reasonably calculated to lead to the discovery of admissible evidence, and beyond the scope of the obligations imposed by the Federal Rules of Civil Procedure.

10. State and describe in detail each such fact relevant to whether and to what extent the alternatives that you identify in response to Interrogatory 9 would achieve the interests that the ban on contributions by minors to candidates seeks to achieve, specifying to which alternatives each such item relates.

OBJECTION: Defendant specifically objects to this Interrogatory because it is dependent on Interrogatory Number 9, which is itself objectionable. Defendant further objects to this Interrogatory as unduly burdensome, overbroad, unlikely to lead to the discovery of admissible evidence, and beyond the scope of the obligations imposed by the Federal Rules of Civil Procedure in that it purports to require Defendant to catalogue responsive information referenced in the legislative record of BCRA and its predecessor bills, which is a matter of public record and equally available to the plaintiffs as it is to Defendant. Defendant also objects to this Interrogatory on the grounds that it seeks discovery of legal arguments, relates to pure legal conclusions, and is unduly burdensome, invasive of

counsel's mental impressions and conclusions, premature, and beyond the scope of the obligations imposed by the Federal Rules of Civil Procedure to the extent that it calls for Defendant to speculate regarding the potential and putative effects of alternatives to the ban on contributions by minors to candidates that were not enacted.
[end of page 11]

11. Identify the sources of the information that you provide in response to Interrogatory 10, giving, for each such fact, the name, address, and telephone number of each human source, the title, date, author, and page number of each published source, and comparable detail for each other source.

OBJECTION: Defendant specifically objects to this Interrogatory because it is dependent on Interrogatory No. 10, which is itself objectionable.

12. If you contend that Congress considered and rejected any alternatives to a ban on contributions or donations by minors to committees of political parties, please state and describe each such alternative that the United States Congress considered and rejected, specifying as to each alternative the grounds on which Congress rejected the alternative.

OBJECTION: Defendant specifically objects to this Interrogatory because the legislative record surrounding BCRA § 318 and any similar provisions in predecessor bills, in which alternatives to the enacted provisions might be discussed, is a matter of public record and is equally available to the Plaintiffs as it is to Defendant. This Interrogatory, therefore, is unduly burdensome, invasive of counsel's mental impressions and conclusions, premature, not reasonably calculated to lead to the discovery of admissible evidence, and beyond the scope of the obligations imposed by the Federal Rules of Civil Procedure.

13. State and describe in detail each such fact relevant to whether and to what extent the alternatives that you identify in response to Interrogatory 12 would achieve the interests that the ban on contributions by minors to candidates seeks to achieve, specifying to which alternatives each such item relates.

OBJECTION: Defendant specifically objects to this Interrogatory because it is dependent on Interrogatory No. 12, which is itself objectionable. Defendant further objects to this Interrogatory as unduly burdensome, overbroad, unlikely to lead to the discovery of admissible evidence, and beyond the scope of the obligations imposed by the Federal Rules of Civil

[end of page 12]

Procedure in that it purports to require Defendant to catalogue responsive information referenced in the legislative record of BCRA and its predecessor bills, which is a matter of public record and equally available to the plaintiffs as it is to Defendant. Defendant also objects to this Interrogatory on the grounds that it seeks discovery of legal arguments, relates to pure legal conclusions, and is unduly burdensome, invasive of counsel's mental impressions and conclusions, premature, and beyond the scope of the obligations imposed by the Federal Rules of Civil Procedure to the extent that it calls for Defendant to speculate regarding the potential and putative effects of alternatives to the ban on contributions by minors to candidates that were not enacted.

14. Identify the sources of the information that you provide in response to Interrogatory 12, giving, for each such fact, the name, address, and telephone number of each human source, the title, date, author, and page number of each published source, and comparable detail for each other source.

OBJECTION: Defendant specifically objects to this

Interrogatory because it is dependent on Interrogatory No. 12, which is itself objectionable.

15. Identify each person whose lay or expert testimony you expect to offer, stating the person's name, address, and telephone number, and summarizing the expected testimony of each such person.

OBJECTION: Insofar as "offer" refers to "offer as a witness" during briefing on the merits of this case or any other hearing, Defendant objects to this Interrogatory. First, the interrogatory is premature, as Defendant has not yet made any determination concerning which witnesses he intends to offer as witnesses or experts. Second, Defendant objects insofar as this Interrogatory purports to impose a requirement for disclosure of each person to be offered as a witness or an expert before the date set by the Court for exchange of witness affidavits and expert

[end of page 13]

reports. Finally, Defendant objects to this Interrogatory on the grounds that it is overbroad, especially to the extent it seeks information about experts that will address issues not raised by the *Echols*' plaintiffs; unduly burdensome; calls for privileged information, legal theories, and attorney work product; is inconsistent with FRCP 26(a)(3); and otherwise exceeds the scope of the obligations imposed by the Federal Rules of Civil Procedure.

ANSWER: Subject to and without waiving the foregoing general and specific objections, defendants will supplement this response in accordance with Fed. R. Civ. P. 26(a)(3) and 26(e), and pursuant to the Court's scheduling order, unless otherwise agreed to by the parties or directed by the Court. Defendant is willing to discuss, at an appropriate time, a date for the parties to identify the witnesses and documents on which they will rely.

16. State and explain in detail the construction that you

advocate with respect to the ban on contributions by minors to candidates, and any alternative construction of the ban that you consider to be an alternative to invalidation of it.

OBJECTION: Defendant objects to this Interrogatory because it seeks discovery of legal arguments, relates to pure legal conclusions, and is unduly burdensome, invasive of counsel's mental impressions and conclusions, premature, not reasonably calculated to lead to the discovery of admissible evidence, and beyond the scope of the obligations imposed by the Federal Rules of Civil Procedure. Defendant also objects to this Interrogatory to the extent that it calls for information protected by the deliberative process privilege.

17. State and explain in detail the construction that you advocate with respect to the ban on contributions or donations by minors to committees of political parties, and any alternative construction of the ban that you consider to be an alternative to invalidation of it.

[end of page 14]

OBJECTION: Defendant objects to this Interrogatory because it seeks discovery of legal arguments, relates to pure legal conclusions, and is unduly burdensome, invasive of counsel's mental impressions and conclusions, premature, not reasonably calculated to lead to the discovery of admissible evidence, and beyond the scope of the obligations imposed by the Federal Rules of Civil Procedure. Defendant also objects to this Interrogatory to the extent that it calls for information protected by the deliberative process privilege.

18. Identify and describe each legislative finding that justifies Section 318, Title III, of the Bipartisan Campaign Reform Act of 2002, specifying the precise statutory provision or other legislative materials that establish each such finding.

OBJECTION: The legislative record surrounding BCRA § 318, in which the findings justifying § 318 are discussed, is

a matter of public record and is equally available to the Plaintiffs as it is to Defendant. This Interrogatory, therefore, is unduly burdensome, invasive of counsel's mental impressions and conclusions, premature, not reasonably calculated to lead to the discovery of admissible evidence, and beyond the scope of the obligations imposed by the Federal Rules of Civil Procedure. Further, Defendant objects to this Interrogatory because it seeks discovery of legal arguments, relates to pure legal conclusions, and is unduly burdensome in a manner not reasonably calculated to lead to the discovery of admissible evidence, and beyond the scope of the obligations imposed by the Federal Rules of Civil Procedure.

19. Identify by name each present member of Congress and other elected federal officer who has engaged in any corrupt act as a result of contributions by minors to candidates or contributions or donations by minors to committees of political parties.

OBJECTION: Defendant objects to this Interrogatory because the Supreme Court has held, and Congress in the legislative record surrounding BCRA has found, that corruption, the appearance of corruption, and the opportunity for corruption are inherent in a system of private

[end of page 15]

election financing (and this would include one in which opportunity exists for the making of disguised contributions through minors (*see* Answer to Interrogatory Nos.1 & 5)); thus, it would be unduly burdensome to identify by name each member of Congress or other elected federal official that is tainted by such corruption. Further, to the extent information responsive to this Interrogatory may be found in the legislative record surrounding BCRA § 318, Defendant objects to this Interrogatory as unduly burdensome, invasive of counsel's mental impressions and conclusions, premature,

not reasonably calculated to lead to the discovery of admissible evidence, and beyond the scope of the obligations imposed by the Federal Rules of Civil Procedure, because the legislative record surrounding BCRA is a matter of public record and is equally available to the Plaintiffs as it is to Defendant.

Defendant further objects to this Interrogatory to the extent that it calls for information protected by the attorney-client privilege, the law enforcement privilege, the investigatory files privilege, the deliberative process privilege, the work product doctrine, the confidential informant privilege, or Federal Rule of Criminal Procedure 6(e). Defendant objects, in addition, to the extent this Interrogatory (i) calls for information contained in confidential criminal investigative files of the U.S. Department of Justice, (ii) calls for information provided to the U.S. Department of Justice subject to any agreement or commitment of confidentiality, and (iii) calls upon the Department of Justice in effect to render advisory opinions about the applicability of newly enacted legislation to past acts.

ANSWER: *See* Answer to Interrogatory No. 2, which is incorporated herein by reference.

20. Describe and [sic] with particularity each such corrupt act, stating the name, address, and telephone number of each person who participated in or induced the act, the date of each act, the place it occurred, and providing a detailed identification of each source of information relied upon.
[end of page 16]

OBJECTION: Defendant objects to this Interrogatory because it dependent on Interrogatory No. 19, which is itself objectionable. Defendant also objects to this Interrogatory on the grounds that it only compounds the burdens imposed by Interrogatory No. 19. *See also* Objections to Interrogatory No. 19, which are incorporated herein by

reference.

ANSWER: *See* Answer to Interrogatory No. 19, which is incorporated herein by reference.

21. Identify by name each present member of Congress and other elected federal officer as to whom there has been an appearance of corruption as a result of contributions by minors to candidates or contributions or donations by minors to committees of political parties.

OBJECTION: *See* Objections to Interrogatory No. 19, which are incorporated herein by reference.

ANSWER: *See* Answer to Interrogatory No. 19, which is incorporated herein by reference.

22. Describe and [sic] with particularity each such appearance of corruption, providing names, dates, and places involved in each such appearance, a description of the circumstances giving rise to the appearance, and a detailed identification of each source of information relied upon.

OBJECTION: The United States and the FCC object to this Interrogatory because it dependent on Interrogatory Number 21, which is itself objectionable. Defendant also objects to this Interrogatory on the grounds that it only compounds the burdens imposed by Interrogatory No. 21. *See also* Objections to Interrogatory No. 19, which are incorporated herein by reference.

ANSWER: *See* Answer to Interrogatory No. 19, which is incorporated here by reference.
[end of page 17]

[certification, subscription and signature omitted]

[caption omitted]

[AMENDED SCHEDULING ORDER]

It is this [26th] day of July, 2002

ORDERED that the scheduling order filed April 24, 2002 is amended to read as follows:

The parties shall adhere to the following amended schedule, bearing in mind the effective date of the Bipartisan Campaign Reform Act of 2002 and the mandate in section 403 thereof that: "It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal."

[end of page 4]

April 24, 2002 Begin general discovery.

May 7, 2002 Deadline for amendment of pleadings, intervention or joinder of additional parties and consolidation of additional cases.

May 27, 2002 Deadline for filing answers.

August 16, 2002 Plaintiffs and Defendants exchange lists of fact and expert witnesses (and the subject matter of each expert's testimony) that they intend to use at trial and identify documents intended for use at trial.

August 26, 2002 Deadline for exchange of document requests interrogatories and requests to admit.

September 6, 2002 Plaintiffs and Defendants identify rebuttal fact and expert witnesses that they intend to use at trial, supplement their lists of fact and expert witnesses and their lists of documents that they intend to use at trial. (The Court will strictly construe rebuttal evidence.)

September 16, 2002 Deadline to exchange final lists of affirmative fact and expert witnesses that the parties intend to use at trial and for final production of documents, answers to interrogatories and requests to admit exchanged August

26, 2002.

September 18, 2002 Deadline for service of deposition notices.

September 23, 2002 Deadline to exchange final expert reports and supporting documentary evidence and final list of documents that the parties intend to use at trial.

September 30, 2002 End of discovery.

October 4, 2002 Begin period for cross-examination of fact and expert witnesses.

[end of page 5]

October 4, 2002 Deadline to exchange fact witness affidavits.

October 6, 2002 Deadline to exchange rebuttal affidavits, rebuttal expert reports and supporting documentary evidence for both.

October 25, 2002 End period for cross-examination of fact and expert witnesses (including rebuttal witnesses).

November 4, 2002 Deadline for filing of opening briefs in support of judgment, accompanied by fact witness and expert testimony and documentary evidence.

November 18, 2002 Deadline for filling opposition briefs.

November 25, 2002 Deadline for filing reply briefs.

December 4, 2002 Oral argument.

The Court is mindful that certain exchanges of information will occur before the end of discovery and therefore the parties are not foreclosed from seeking leave to supplement witness and exhibit lists and/or amend expert reports once discovery ends. Cf. Fed. R. Civ. P. 15.

The motion to compel responses to "contention" interrogatories is taken under advisement and the Court will issue an appropriate order at a later date.

Counsel

Counsel are referred to Local Rule LCvR 26.2 and expected to fully conform with its directives. Moreover,

counsel are required, under both Federal Rule of Civil Procedure 26(f) and Local Rule LCvR 7.1(m), to confer in good faith in an effort to resolve any discovery dispute before bringing it to the court's attention.

Nothing in this order precludes any party from filing motions for summary judgment, in whole or in part, at the appropriate time. The parties shall comply fully with Local Rule LCvR 7.1(h), otherwise the submission will be stricken. Additionally, each submission must be accompanied by a table of cases and other authority cited therein. The parties are strongly encouraged to carefully review *Jackson v. Finnegan, Henderson, Farabow, Garrett & Dunner, et al.*, 101 F.3d 145 (D.C. Cir. 1996), on the subject of Local Rule LCvR 7.1(h), formerly Rule 108(h).

Counsel are advised that the above schedule is firm.

[end of page 6]

SO ORDERED.

[subscription and signature omitted]

[3 PCS CDP 239]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATOR MITCH McCONNELL, *et al*, Plaintiffs, v. FEDERAL ELECTION COMMISSION, *et al*. Defendants.	Civil Action No.: 02-CV-0582 (CKK, KLH, RJL)
CALIFORNIA DEMOCRATIC PARTY, *et al*, Plaintiffs, v. FEDERAL ELECTION COMMISSION, *et al*. Defendants.	Civil Action No.: 02-CV-0875 (CKK, KLH, RJL) CONSOLIDATED ACTIONS

INTERVENORS' RESPONSES TO PLAINTIFFS CALIFORNIA DEMOCRATIC PARTY AND CALIFORNIA REPUBLICAN PARTY'S FIRST SET OF REQUESTS FOR ADMISSIONS, INTERROGATORY, AND REQUEST FOR THE PRODUCTION OF DOCUMENTS

Pursuant to Rule 36 of the Federal Rules of Civil Procedure and Rule 26 of the Rules of this Court, and the Court's Order of July 16, 2002 entering the Parties' Stipulation and Order Concerning Initial Disclosures and Discovery Procedures, and subject to their previously served specific and general objections, Intervenors Senator John McCain, Senator Russell Feingold, Representative

Christopher Shays, Representative Martin Meehan, Senator Olympia Snowe, and
[3 PCS CDP 240] Senator James Jeffords ("Intervenors") respond to the First Set of Requests for Admissions, Interrogatory, and Request for Production of Documents of Plaintiffs California Democratic Party and California Republican Party ("Plaintiffs") as follows:

RESPONSES TO REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1

RFA No. 1 refers to Exhibit A ("Don't Let These Bills Become Law.... Byron Sher for State Senate"). If the California Democratic Parry wishes to do a mass mailing of Exhibit A by mail in support of Boron Sher for State Senate after BCRA goes into effect, admit the following:

(a) If the Mailer is done in connection with a special election at which no federal candidates will appear, it can be paid for completely with non federal money subject only to California law;

(b) If the exact same mailer is done, but the special election is held in conjunction with the State primary at which federal candidates will appear, this mailer will be considered federal election activity and must be paid for either completely with federal contributions or with a combination federal and Levin Amendment contributions.

RESPONSE

Without waiving the previously-served specific and General objections, and subject to them, Intervenors respond as follows: (a) admitted; (b) denied.

REQUEST FOR ADMISSION NO. 2

RFA No. 2 refers to Exhibit B ("Kevin Shelley Television Advertisement "). Admit the following:

(a) If State candidate Shelley wishes to run this advertisement after BCRA goes into effect, he can pay for it with completely non federal contributions;

(b) If the California Democratic Party wishes to run this advertisement on behalf of State candidate Kevin Shelley, it must be paid for completely with federal contributions, i.e., no non federal or Levin Amendment contributions may be used.

RESPONSE

Without waiving the previously-served specific and General objections, and subject to them, Intervenors respond as follows: (a) admit that the provisions of the BCRA, standing alone, do not prohibit the use of completely non-federal contributions; (b) denied.

[3 PCS CDP 241]

REQUEST FOR ADMISSION NO. 3

Assuming that the BCRA had been in effect when the following television advertisement was run in the State of Indiana by the authorized gubernatorial committee of then-U.S. Rep. David Mclntosh, Republican nominee for Governor of Indiana, admit that under BCRA, such gubernatorial committee would be required to establish a federal political committee for the gubernatorial campaign, register with the Federal Election Commission, and pay the costs of the advertisement entirely with federal contributions.
Television advertisement:

(Bush looking into camera)

Chyron/graphic: "Governor George Bush (then a candidate for President) "

Bush speaking): ***"The recession today in America is not in the board room, it's in the classroom. David McIntosh knows this. As Indiana's next Governor he'll be a strong partner working with me to reform education.***

David and I both want to empower parents, raise standards and require accountability. You can improve Indiana schools by electing a reform minded Governor committed to change. David McIntosh-it's that important. "

Chyron/graphic: *David McIntosh, Governor*
New Leadership, a Fresh Start

RESPONSE

Without waiving the previously-served specific and General objections, and subject to them, Intervenors respond as follows: admitted.

REQUEST FOR ADMISSION NO. 4

RFA No. 4 refers to Exhibit C ("Our Vote is Our Voice . . .Keep Asian Pacific American Families Moving Forward"). If the California Democratic Party wishes to do a mass mailing of Exhibit C by mail after BCRA goes into effect, admit that it will be considered federal election activity and must be paid for either completely with federal contributions or with a combination of federal contributions and Levin Amendment contributions.

RESPONSE

Without waiving the previously-served specific and

General objections, and subject to them, Intervenors respond as follows: admitted.

[3 PCS CDP 242]
REQUEST FOR ADMISSION NO. 5

RFA No. 5 refers to Exhibit D ("On Nov. 5th, We 're Voting For Ourselves "). Admit that if the BCRA had been in effect at the time the newspaper advertisement featured at Exhibit D was run (Fall, 1996), it would have been considered federal election activity which identified a federal candidate and the California Democratic Party would have been required to pay for it completely with federal contributions.

RESPONSE

Without waiving the previously-served specific and General objections, and subject to them, Intervenors respond as follows: admitted.

REQUEST FOR ADMISSION NO. 6

RFA No. 6 refers to Exhibit E ("Your Vote Is Crucial "). If the California Democratic Parry wishes to do a mass mailing of Exhibit E by mail after BCRA goes into effect and within 120 days of a federal election, admit that it will be considered federal election activity and must be paid for completely with federal contributions or with a combination of federal contributions and Levin Amendment contributions.

RESPONSE

Without waiving the previously-served specific and General objections, and subject to them, Intervenors respond as follows: admitted.

REQUEST FOR ADMISSION NO. 7

RFA No. 7 refers to Exhibit F. If the California Democratic Party wishes to do a mass mailing of Exhibit F by mail after BCRA goes into effect and within 120 days of a federal election, admit that it will be considered federal election activity which promotes a federal candidate and must be paid for completely with federal contributions.

RESPONSE

Without waiving the previously-served specific and General objections, and subject to them, Intervenors respond as follows: admitted.

REQUEST FOR ADMISSION NO. 8

RFA No. 8 refers to Exhibit G ("Vote Tuesday, March 5" San Francisco Doorhanger). The March 5 election included federal candidates. If the California Democratic Party wishes to distribute more than 500 pieces of Exhibit G to voters after BCRA goes into
[3 PCS CDP 243]
effect just prior to the election, admit that it will be considered federal election activity and must be paid for either completely with federal contributions or with a combination of federal contributions and Levin Amendment contributions.

RESPONSE

Without waiving the previously-served specific and General objections, and subject to them, Intervenors respond as follows: denied because any response would call for speculation.

REQUEST FOR ADMISSION NO. 9

RFA No. 9 refers to Exhibit H ("Antonio Villaraigosa. . . Something They Can All Agree On "). The April 10 election was a Los Angeles election that did not include federal candidates. If BCRA had been in effect and the California Democratic Parry had mailed Exhibit H to Los Angeles voters just prior to the election, admit that it would not have been considered federal election activity and could have been paid for completely with non federal money subject only to California restrictions.

RESPONSE

Without waiving the previously-served specific and General objections, and subject to them, Intervenors respond as follows: admit that the provisions of the BCRA, .standing alone, do not prohibit the use of completely non-federal contributions.

REQUEST FOR ADMISSION NO. 10

RFA No. 10 refers to Exhibit I ("[Jesse] Jackson Prop. 38 Script "). If the California Democratic Party wishes to pay for a radio advertisement with the script contained in Exhibit 1, admit that it will be considered federal election activity and must be paid for completely with federal contributions, i.e., no non federal or Levin Amendment contributions may be used.

RESPONSE

Without waiving the previously-served specific and General objections, and subject to them, Intervenors respond as follows: admitted.

REQUEST FOR ADMISSION NO. 11

RFA No. 11 refers to Exhibit J ("Mean Spirited...No on

209"). If the California Democratic Party wishes to pay for a radio advertisement with the script contained in Exhibit J. admit that it will be considered federal election activity and must be paid for completely with [3 PCS CDP 244] *federal contributions, i.e., no non federal or Levin Amendment contributions may be used.*

RESPONSE

Without waiving the previously-served specific and General objections, and subject to them, Intervenors respond as follows: denied because any response would call for speculation.

REQUEST FOR ADMISSION NO. 12

RFA No. 12 refers to Exhibit K ("Vote Democratic! Tuesday, November 7th! "). If the California Democratic Party wishes to distribute Exhibit K by mail after BCRA goes into effect, admit that it will be considered federal election activity and must be paid for either completely with federal contributions or with a combination of federal contributions and Levin Amendment contributions.

RESPONSE

Without waiving the previously-served specific and General objections, and subject to them, Intervenors respond as follows: denied.

REQUEST FOR ADMISSION NO. 13

Assume that George Sheldon is the Democratic nominee for Florida Commissioner of Education, John Cosgrove is the Democratic nominee for state insurance commissioner and Leslie Scales is the Democratic nominee for Florida State

Senate, District 11. The "election day" will be the general election in November which will include the election of federal officeholders. The Florida State Party wishes to call prospective voters with the following script:

> *"Hi, my name is . I know you have received an application to vote absentee in the mail. Please take a few minutes to fill in the last four digits of your social security, sign the application and put the application in the mail. This way you express your right to vote no matter how busy you are on election day. And be sure to vote for George Sheldon, John Cosgrove and Leslie Scales. "*

If this phone bank activity is done after BCRA goes into effect, admit that (a) the use of this script in a telephone bank, as defined in BCRA, during the months of September and October 2000, would constitute federal election activity, and would have to be paid for either completely with federal contributions or with a combination of federal contributions and Levin Amendment contributions; and

(b) the costs of the telephone bank could not lawfully be paid for with contributions otherwise lawful under Florida state law, unless the contributions also met the
[3 PCS CDP 245]
conditions and restrictions described in subparagraph (a) above.

RESPONSE

Without waiving the previously-served specific and General objections, and subject to them, Intervenors respond as follows: (a) admitted; (b) admitted.

REQUEST FOR ADMISSION NO. 14

RFA No. 14 refers to Exhibit L, a flyer for the Yolo County Democratic Central Committee annual "Bean Feed." If Congressman Thompson attends the Bean Feed after BCRA goes into effect, admit that he violates BCRA if he does any of the following:

(a) Addresses the crowd and urges them to "contribute to the Yolo County Democratic Central Committee";

(b) Addresses the crowd and urges them to "contribute to the California Democratic Party";

(c) Addresses the crowd and urges them to "contribute to the State candidates " also in attendance;

(d) Meets with individuals who have contributed to his campaign whom he thanks and urges them to "contribute to the Democratic Party" as well;

(e) Meets with individuals who have contributed to his campaign whom he thanks and urges them to "support the State candidates" to the extent permitted by State law.

RESPONSE

Without waiving the previously-served specific and General objections, and subject to them, Intervenors respond as follows: denied because any response would call for speculation.

REQUEST FOR ADMISSION NO. 15

RFA No. 15 refers to Exhibit M [invitation]. Exhibit M states that Congresswoman Waters is a sponsor and contains the following statement: "Contributions to the non-Federal account of any amount are permitted under state law and can be written from personal, corporate, union or PAC accounts... " Admit that after BCRA goes into effect, it will be unlawful for any federal officeholder or candidate to co-host or sponsor a California Democratic Party function where the invitation

contains the language in Exhibit I, or which otherwise seeks to raise both federal and either non federal money or Levin Amendment money.

RESPONSE

Without waiving the previously-served specific and General objections, and subject to them, Intervenors respond as follows: admitted.

[3 PCS CDP 246]
REQUEST FOR ADMISSION NO. 16

Assume that a Catholic parish pays for the distribution, by mail and in the Church building, on the Sunday prior to the 2004 general election, of a Church bulletin that includes the following announcement:

> *"Political Responsibility*
> *As Catholics, we need to share our values, raise our voices and use our votes to shape a society that protects human life, promotes family life, pursues social justice and practices solidarity.*
> *--U.S.. Catholic Bishops Administrative Board, Faithful Citizenship: Civic Responsibility for a New Millennium, p. 9. Next Tuesday, November 2, 2004, the national and local elections will be held. We urge all parishioners to exercise their right and responsibility to vote. "*

Admit that after if BCRA goes into effect, the chairman of a local committee of a political party would be forbidden from soliciting any funds for, or making or directing any donations to the parish

RESPONSE

Without waiving the previously-served specific and General objections, and subject to them, Intervenors respond as follows: denied.

REQUEST FOR ADMISSION NO. 17

RFA No. 17 refers to Exhibit N ("Lift Every Voice and Vote "). Assuming that the organization that distributes Exhibit N is a tax exempt organization under Internal Revenue Code section 501(c)(3), admit that it would be unlawful for the California Democratic Party to contribute to such organization.

RESPONSE

Without waiving the previously-served specific and General objections, and subject to them, Intervenors respond as follows: admitted.

REQUEST FOR ADMISSION NO. 18

Art Torres is the chair of the California Democratic Party. He is also a member of the Democratic National Committee Executive Committee. Assuming BCRA becomes effective, admit that Torres is prohibited from soliciting or raising non federal contributions for the California Democratic Party, even if such contributions meet the limitations of, and can be lawfully received under, California state law.

[3 PCS CDP 247]

RESPONSE

Without waiving the previously-served specific and General objections, and subject to them, Intervenors respond as follows: denied.

REQUEST FOR ADMISSION NO. 19

The chairman of the Essex County, New Jersey, Democratic Committee is U.S. Rep. Donald Payne (D-N.J.). After BCRA becomes effective, admit that Rep. Payne will be prohibited from soliciting or raising any non federal contributions for the Essex County Democratic Committee, even if such contributions meet the limitations of, and can be lawfully received under, New Jersey state law.

RESPONSE

Without waiving the previously-served specific and General objections, and subject to them, Intervenors respond as follows: denied.

REQUEST FOR ADMISSION NO. 20

Assume that both the California Democratic Party and the California Republican Party have programs whereby local party committees which engage in local voter registration activity receive an amount of money from the state party for each valid registration. Assuming BCRA goes into effect, admit the following:

(a) If the program is conducted within 120 days of a federal election, such programs can only be paid for by the state parties either completely with federal contributions or with a combination of federal contributions and Levin Amendment contributions;

(b) Such programs are prohibited tender BCRA because they are impermissible transfers between party committees.

RESPONSE

Without waiving the previously-served specific and

General objections, and subject to them, Intervenors respond as follows: (a) denied; (b) denied.

REQUEST FOR ADMISSION NO. 21

RFA refers to Exhibit 0. ("Delaware Democrat"). Assuming that BCRA were in effect at the time of its distribution, admit that BCRA would require the costs of distribution of the newsletter attached as Exhibit 0 by the Delaware State Democratic Committee to be paid for completely with federal contributions.

[3 PCS CDP 248]

RESPONSE

Without waiving the previously-served specific and General objections, and subject to them, Intervenors respond as follows: admitted, assuming that the mailing in question constitutes a "mass mailing" as defined by BCRA.

REQUEST FOR ADMISSION NO. 22

Assume that a California ballot measure committee is exempt from taxation under Internal Revenue Code section 501(c)(4) and is engaging in public communications encouraging persons to vote for the measure at an election at which federal candidates will appear. Its public communications feature the election date and information about voting locations. Admit that after BCRA's effective date

(a) It will be unlawful for the California Democratic Party to contribute to such a ballot measure committee;

(b) It will be unlawful for the California Democratic Party to make an "in-kind " contribution to such a ballot measure committee by, e.g., engaging in its own public communications if those communications are coordinated with the committee.

RESPONSE

Without waiving the previously-served specific and General objections, and subject to them, Intervenors respond as follows: (a) admitted; (b) admitted.

REQUEST FOR ADMISSION NO. 23

RFA No. 23 refers to Exhibit P. If the BCRA had been in effect at the time of the mass mailing of Exhibit P by the Indiana Democratic Party, admit that such mailing would constitute federal election activity and the cost of such mailing would have to be paid for either completely with federal contributions or with a combination of federal contributions and Levin contributions.

RESPONSE

Without waiving the previously-served specific and General objections, and subject to them, Intervenors respond as follows: admitted.

REQUEST FOR ADMISSION NO. 24

RFA No. 24 refers to Exhibit Q ("Vote Democratic Nov. 6 [doorhanger]."). If the Virginia Democratic Party distributes more than 500 doorhangers such as Exhibit Q after the effective date of the BCRA, admit that such expenditure would constitute federal election activity and would have to be paid for either completely with federal contributions or with a combination of federal contributions and Levin contributions.

[3 PCS CDP 249]

RESPONSE

Without waiving the previously-served specific and

General objections, and subject to them, Intervenors respond as follows: admitted.

REQUEST FOR ADMISSION N0. 25

RFA No. 25 refers to Exhibit R ("Their Teachers Ought To Know "). If the California Democratic Party sends out a mass mailing of Exhibit R after the effective date of BCRA, admit that such mailing would constitute federal election activity and the cost of such mailing would have to be paid for either completely with federal contributions or with a combination of federal contributions and Levin contributions.

RESPONSE

Without waiving the previously-served specific and General objections, and subject to them, Intervenors respond as follows: denied.

REQUEST FOR ADMISSION N0. 26

The California Democratic Party has in the past contributed to the R. Phillip Randolph Institute, a nonprofit organization under section 501(c)(3) of the Internal Revenue Code. The Institute engages in nonpartisan voter registration. Admit that such a contribution will be unlawful after the effective date of BCRA.

RESPONSE

Without waiving the previously-served specific and General objections, and subject to them, Intervenors respond as follows: admitted.

REQUEST FOR ADMISSION N0. 27

RFA No. 27 refers to Exhibit S ("[Senator John] McCain [Non-Michigan] Script "). If the California Republican Party wishes to pay for a radio advertisement with the script contained in Exhibit 5, admit that it will be considered a federal election activity and must be paid for completely with federal contributions, i.e., no non federal or Levin Amendment contributions may be used.

RESPONSE

Without waiving the previously-served specific and General objections, and
[3 PCS CDP 250] subject to them, Intervenors respond as follows: admitted.

REQUEST FOR ADMISSION NO. 28

RFA No. 27 refers to Exhibit T ("Vote Republican Vote-By-Mail Application "). If the California Republican Party wishes to pay for the absentee ballot application and "party-slate" listing of Republican nominees, including non federal candidates and state ballot measures, and wishes to include the statement "Vote November _____. " admit that this expenditure will be considered federal election activity and must be paid completely with federal contributions, i.e., no non federal or Levin Amendment contributions may be used.

RESPONSE

Without waiving the previously-served specific and General objections, and subject to them, Intervenors respond as follows: admitted.

RESPONSES TO INTERROGATORY AND

DOCUMENT REQUEST

INTERROGATORY

If your response to any Request for Admission set forth above is other than an unqualified admission, for each denial or partial denial set forth in full the factual basis for your denial or partial denial, identifying any witnesses or documents you rely upon in support of your denial or partial denial.

DOCUMENT REQUEST

Produce all documents relied upon in responding to the requests for admissions set forth above.

Without waiving the previously-served specific and General objections, and subject to them, Intervenors respond as follows: BCRA, the terms and provisions of which speak for themselves.

[3 PCS CDP 251]

Dated this 16th day of September, 2002.

Respectfully submitted,
Roger M. Witten (D.C. B. No. 163261)
Seth P. Waxman (D.C. Bar No. 257337)
Randolph D. Moss (D.C. Bar No. 417749)
Eric J. Mogilnicki (D.C. Bar No. 443682)
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Counsel for the Intervening Defendants

[3 PCS CDP 252]

VERIFICATION OF REQUEST FOR ADMISSION RESPONSES

Washington D.C.
)
United States of America
)

I verify under penalty of perjury that the foregoing Responses to the Requests for Admissions propounded in the First Set of Requests for Admissions of Plaintiffs California Democratic Parry and California Republican Party in California Democratic Party. et al. v. FEC, et al., No. 02-CV-875, consolidated with McConnell. et al., v. FEC, et al.. Civil Action No. 02-CV-582 (CKK, KLH; RJL) (consolidated action) are true and correct.

Executed this ~ day of September, 2002

John McCain
United States Senator

[3 PCS CDP 253]

VERIFICATION OF REQUEST FOR ADMISSION RESPONSES

Washington D.C.
)
United States of America
)

I verify under penalty of perjury that the foregoing Responses to the Requests for Admissions propounded in the First Set of Requests for Admissions of Plaintiffs California Democratic Parry and California Republican Party in California Democratic Party. et al. v. FEC, et al., No. 02-CV-875, consolidated with McConnell. et al., v. FEC, et al.. Civil Action No. 02-CV-582 (CKK, KLH; RJL) (consolidated action) are true and correct.

Executed this ~ day of September, 2002_

Christopher Shays
United States Representative

[3 PCS CDP 254]

VERIFICATION OF REQUEST FOR ADMISSION RESPONSES

Washington D.C.
)
United States of America
)

I verify under penalty of perjury that the foregoing Responses to the Requests for Admissions propounded in the First Set of Requests for Admissions of Plaintiffs California Democratic Parry and California Republican Party in California Democratic Party. et al. v. FEC, et al., No. 02-CV-875, consolidated with McConnell. et al., v. FEC, et al.. Civil Action No. 02-CV-582 (CKK, KLH; RJL) (consolidated action) are true and correct.

Executed this ~ day of September, 2002_

Olympia J. Snowe
United States Senator

[3 PCS CDP 255]

VERIFICATION OF REQUEST FOR ADMISSION RESPONSES

Washington D.C.
)
United States of America
)

I verify under penalty of perjury that the foregoing Responses to the Requests for Admissions propounded in the First Set of Requests for Admissions of Plaintiffs California Democratic Parry and California Republican Party in California Democratic Party. et al. v. FEC, et al., No. 02-CV-875, consolidated with McConnell. et al., v. FEC, et al.. Civil Action No. 02-CV-582 (CKK, KLH; RJL) (consolidated action) are true and correct.

Executed this ~ day of September, 2002

James Jeffords
United States Senator

Vote Democrat.

"We owe it to our families and to ourselves to preserve progress and make our voices heard. On election day, let's vote for our future. Vote Democrat."

THE HONORABLE NORMAN Y. MINETA
First Asian Pacific American in history to be appointed to a cabinet position
Appointed by your Democratic Administration

Paid for by the California Democratic Party, 911 - 20th Street, Sacramento CA 95814

CDP\CRP App.
00177

[Req. for Adm. Ex: C; 3 PCS CDP 177]

DEMOCRATIC POLICIES WILL KEEP US MOVING FORWARD.

EMPOWERING ASIAN PACIFIC AMERICAN COMMUNITIES. Democrats continue to do more to advance issues of importance to Asian Pacific Americans. This Democratic Administration tripled the number of Asian Pacific American appointments made over the previous Republican Administration and nominated more Asian Pacific Americans to the federal bench than any other previous Administration. Furthermore, Democrats have worked to ensure that Census 2000 counts all Americans.

PRESERVING THE FUTURE OF ASIAN PACIFIC AMERICAN FAMILIES. This Democratic Administration continues to improve the quality of life of Asian Pacific Americans by saving Social Security, improving access to quality health care and eliminating racial and ethnic disparities in health and health care management. Democrats denounce measures to eliminate affirmative action programs and have fought against racial profiling.

WORKING TO END HATE CRIMES. Democrats have a solid record fighting to end hate crimes in America. This Democratic Administration fought for and signed the Hate Crimes Sentencing Enhancement Act in 1994. Democrats are also fighting to pass the Hate Crimes Prevention Act — bipartisan legislation to underscore that our society will not tolerate crimes based on race, sexual orientation, gender, color or disability.

HELPING SMALL BUSINESSES. Democratic policies helped Asian Pacific Americans to open a record number of new businesses. Between 1993 and 2000, the Small Business Administration (SBA) approved over 30,200 loans to Asian Pacific American entrepreneurs. By the year's end, the SBA estimates they will back over $10 billion in loans to Asian Pacific American businesses.

GENERATING EMPLOYMENT, INCREASING WAGES. Democratic policies helped to create the best American economy in a generation. Wages continue to increase while unemployment is at its lowest in 30 years. Median annual income for Asian Pacific American households increased and homeownership reached record levels.

KEEPING OUR FAMILIES SAFE. Your Democratic Administration works tirelessly to protect our families and our communities. Democrats are putting 10,000 new police officers on the streets. In addition, they ensure programs are in place to help keep our kids and schools safe from guns and drugs. During this Democratic Administration, violent crime rates fell 27%.

INVESTING IN HIGHER EDUCATION. Your Democratic Administration's Balanced Budget Act made the largest investment in education in 30 years. HOPE Scholarships assist nearly 7 million students by providing a $1,500 tax credit to help make the first two years of college accessible for all. Pell Grants helped nearly 4 million low- and moderate-income students attend college in 1998.

BELIEVING IN OUR KIDS. Democrats believe in the future of our children. In 1998, your Democratic Administration introduced a plan to repair and rebuild over 5,000 public schools with $22 billion in public bonding authority. Democrats support a plan to reduce class sizes nationwide by completing the hiring of 100,000 teachers. Democrats also seek to recruit and train an additional one million new teachers.

FIGHTING FOR FAIR IMMIGRATION PRACTICES. Democrats have worked for fair immigration practices, support family based reunifications and public benefits. Democrats have advocated for policies and funding that decrease the naturalization backlog and restore public benefits. Last year, the Administration approved legislation restoring food stamps benefits to more than 250,000 elderly, disabled and other legal immigrants. Democrats approved legislation to ensure disabled legal immigrants have access to Medicaid, SSI, and other related benefits. They announced new initiatives to ensure that legal immigrants get public housing, food stamps and Medicaid or health insurance for children and expectant mothers without the risk of losing their eligibility to become US citizens. Furthermore, Democrats extended the program to include childcare and emergency assistance.

VOTE FOR PROGRESS. VOTE DEMOCRAT. November 7, 2000

CDP\CRP App.
00178

[Req. for Adm. Ex: C; 3 PCS CDP 178]

1719

[Req. for Adm. Ex: G; 3 PCS CDP 190]

1720

[Req. for Adm. Ex: G; 3 PCS CDP 190]

BEST AVAILABLE COPY

Jackson Prop. 38 Script
CapAd

Announcer: The Reverend Jesse Jackson, with special reasons to vote this election.

Jackson: On November 7th, your vote is not just about candidates. We need everyone in our community voting to defeat Prop. 38 .. .the school voucher initiative ...

Prop. 38 brings new discrimination to our schools ... Our children can be turned away based on test scores, religion or even family income.

I urge you to get out to vote on November 7th ...

Vote no on Prop. 38, KEEP HOPE ALIVE!!!

[Req. for Adm. Ex: I; 3 PCS CDP 197]

"MEAN SPIRITED"

:60 radio

Tuesday is the day we decide whether we let them turn the clock back on us.

Because Tuesday is election day, the day we can vote down Governor Wilson's scheme to take away our civil rights and end our chance for fairness.

The Republican scheme is Prop. 209 and it would eliminate affirmative action which helps make our society fair and gives every one of us a fair chance at the American Dream.

But to say yes to fairness and no to mean-spirited Prop. 209, we have to say yes to voting.

On Tuesday, we must go to the polls and cast a most important vote for fairness, for affirmative action - a vote against Prop. 209.

Vote no on 209. Vote no on the Republican scheme to turn the clock back and shut down equal opportunity for all.

On Tuesday, vote yes for our future and no on Prop. 209. Don't let the Republicans get away with it.

Don't stay home. That's what they're counting on.

Paid for by the California Democratic Party.

[Req. for Adm. Ex: J; 3 PCS CDP 199]

YOLO COUNTY DEMOCRATIC
CENTRAL COMMITTEE

Bean Feed 2001

November 3, 2001
Veterans' Memorial Center
Davis

[Req. for Adm. Ex: L; 3 PCS CDP 204]

YOLO COUNTY DEMOCRATIC
CENTRAL COMMITTEE

Officers
Scott Lay, Chair
Lisa Chin, Vice Chair
Bob Bockwinkel, Treasurer
Marianne Estes, Secretary
Kay Clement, Parliamentarian
Mariko Yamada, Immediate Past Chair

Affiliated Clubs
Davis Democratic Club
Davis High School Democratic Club
UC Davis College Democrats
West Sacramento Democratic Club
Woodland Democratic Club

ELECTION 2000 ACTIVITIES

- Opened three campaign offices, providing a gateway for volunteers in the three largest cities in the county: Davis, West Sacramento and Woodland.
- Recruited hundreds of volunteers for phone banks, precinct walking and other campaign activities.
- Made over 7,000 get-out-the vote phone calls, reaching important voters who may not have otherwise turned out to vote.
- Delivered 54.9% of the vote for Al Gore.
- Delivered 67.2% of the vote for Assemblywoman Helen Thomson, re-electing her to the Assembly

STAY UP-TO-DATE ONLINE AT
WWW.YOLODEMS.NET

Design and printing donated.

[Req. for Adm. Ex: L; 3 PCS CDP 204]

PRESENTING SPONSORS

Congressman Mike Thompson
State Senator Mike Machado
Assembly Member Helen Thomson
Bob Bockwinkel, Lyon and Associates
Christopher Cabaldon
Dick Fisher
Paul Schapiro
Scott Lay & Kara Ueda
Lois & Bruce Wolk

HOSTS

Ruth & Vigfus Asmundson
Susie Boyd
Joan Brann
Martie Dote
Eleanor Fairclough
Sheryl & Hue Freeman
Sue Greenwald & Mike Sywassink
Steve & Jerri Hardy
Michael Harrington
Teresa & Jerry Kuneki
Sue & Mike McCormick
Barry Melton
Jeff & Adrienne Monroe
John Pavlis
Donna & James Provenza
Ted Puntillo
Lois & Dave Rosenberg
Joan & Thomas Sullee
Don Saylor
Bob Schelen
Robin & Steven Souza,
Ultra Clean Pool Service
Paul Spitler
Cass Sylvia & Craig Reynolds
Bob Thompson
Katie & Oscar Villegas
Betty & William Weir
Dan Weitzman
Marty West
Don Winters
Marilee Yamada & Janice Wong
Richard Yamagata,
Virtual Market Enterprises
Lane Yamaguchi

[Req. for Adm. Ex: L; 3 PCS CDP 205]

FESTIVITIES

Reception

Music by Barry Melton and Friends
Beverages Donated by
Assembly Member Helen Thomson

Dinner

Catering by Tony & Rhonda Gruska

Program

Dave Rosenberg, Master of Ceremonies

Democratic Candidates for State Assembly
Christopher Cabaldon
Stephen Hardy
Lois Wolk

The Weir-Williamson Award
annually presented by the Davis Democratic Club
awarded by Assembly Member Helen Thomson

Raffle and Recognitions
Scott Lay, Chair

Raffle items generously donated by:
Aggie Fan Club
Assembly Member Helen Thomson
Chipotle Grill
Rose Diaz-Robles
Raley's and Bel Air

[Req. for Adm. Ex: L; 3 PCS CDP 205]

[Req. for Adm. Ex: P; 3 PCS CDP 220]

[Req. for Adm. Ex: P; 3 PCS CDP 221]

[Req. for Adm. Ex: P; 3 PCS CDP 222]

GO

Tues., November 2nd.

Vote

Democrat Bart Peterson for Mayor

Safer Kids

Bart Peterson will make safe schools a top city priority by focusing more police efforts on the goal of protecting our kids in school and in our neighborhoods.

Teaching our children right from wrong

Bart Peterson will work with parents, administrators and teachers to teach our children the values of responsibility, respect and the difference between right from wrong in our schools.

After-school programs

Bart Peterson has a plan to establish more after-school programs and work with public schools to keep them open after 3:00 p.m. to keep kids out of trouble.

Commitment to our public schools

Bart Peterson believes that building a better city starts with building better public schools. He has a commitment to improve our children's chances, by improving their education and involving parents, teachers and the community in those improvements.

Democrat Bart Peterson for Mayor

Safer Kids, Better Education.

CDP\CRP App. 00222

1729

[Req. for Adm. Ex: P; 3 PCS CDP 223]

Vote for
Bart Peterson and the Democratic Team for City-County Council

Lonnell "King Ro" Conley

•

Joanne M. Sanders

•

Ron Gibson

•

Karen Horseman

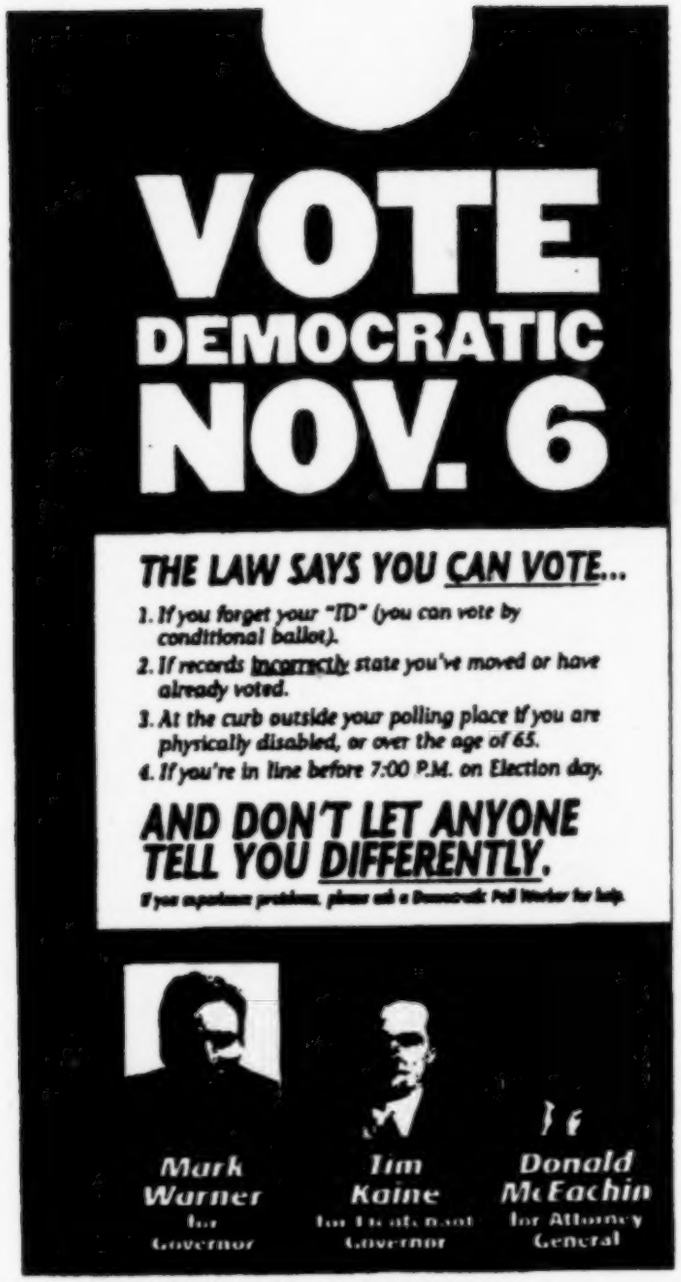
Vote Tuesday, November 2nd

If you need a ride to the polls, please call 231-7100

Paid for by Indiana Democratic Party, Robin Winston, Chairman.

CDP\CRP App. 00223

1730



[Req. for Adm. Ex: Q; 3 PCS CDP 225]

THE COMMISSION'S RESPONSES TO THE FIRST AND SECOND REQUESTS FOR ADMISSION BY PLAINTIFF REPUBLICAN NATIONAL COMMITTEE

1. Defendants cannot identify any evidence that any United States Senator changed his or her vote on any legislation in exchange for a donation of non-federal money to that Senator's political party.

RESPONSE: Admitted with respect to evidence identified to date by the FEC.

2. Defendants cannot identify any evidence that any member of the United States House of Representatives changed his or her vote on any legislation in exchange for a donation of non-federal money to that Congressman's political party.

[*3] **RESPONSE**: Admitted with respect to evidence identified to date by the FEC.

* * *

[*6] 23. The Federal Election Commission can identify no evidence that, in exchange for a contribution of federal funds, the Republican National Committee ever attempted to change the position of a federal candidate or officeholder on pending legislation.

RESPONSE: Admitted.

24. The Federal Election Commission can identify no evidence that, in exchange for a donation of non-federal funds, the Republican National Committee ever attempted to change the position of a federal candidate or officeholder on pending legislation.

RESPONSE: Admitted.

FEC Response to RFA 2-3, 6

* * *

[*18] 101. Some organizations that are not political party committees engage in voter registration activities paid for with nonfederal money.

RESPONSE: Admitted.

102. Some organizations that are not political party committees engage in voter identification activities paid for with nonfederal money.

RESPONSE: Admitted.

103. Some organizations that are not political party committees engage in get-out-the-vote activities paid for with nonfederal money.

RESPONSE: Admitted.

[*19] 104. Some organizations that are not political party committees engage in issue advocacy paid for with nonfederal money.

RESPONSE: Admitted.

105. Some non-political party organizations that engage in voter registration activities paid for with nonfederal money lobby federal officeholders.

RESPONSE: Admitted.

106. Some non-political party organizations that engage in voter identification activities paid for with nonfederal money lobby federal officeholders.

RESPONSE: Admitted.

107. Some non-political party organizations that engage in get-out-the-vote activities paid for with nonfederal money lobby federal officeholders.

RESPONSE: Admitted.

108. Some non-political party organizations that engage in issue advocacy paid for with nonfederal money lobby federal officeholders.

RESPONSE: Admitted.

109. Non-political party organizations that pay for voter registration activity with nonfederal money and that also lobby federal officeholders corrupt the federal officeholders they lobby.

RESPONSE: The Commission objects to this request to the extent that it requires information not in the possession of the Commission and to the extent that it raises pure issues of law. The Commission also objects to this request because the term "corrupt" as used therein are vague. Admitted to the extent that there is a potential for corruption or the appearance of corruption when non-political party organizations that pay for voter registration activity with nonfederal money also lobby federal officeholders.

110. Non-political party organizations that pay for voter registration activity with nonfederal money and that also lobby federal officeholders appear to corrupt the federal officeholders they lobby.

[*20] **RESPONSE**: See Response to Request No, 109.

111. Non-political party organizations that pay for voter identification activity with nonfederal money and that also lobby federal officeholders corrupt the federal officeholder they lobby.

RESPONSE: The Commission objects to this request to the extent that it requires information not in the possession of the Commission and to the extent that it raises pure issues of law. The Commission also objects to this request because the term "corrupt" as used therein are vague. Admitted to the extent that there is a potential for corruption or the appearance of corruption when non-political party organizations that pay for voter identification activity with nonfederal money also lobby federal officeholders.

112. Non-political party organizations that pay for voter identification activity with nonfederal money and that also lobby federal officeholders appear to corrupt the federal officeholders they lobby.

RESPONSE: See Response to Request No. 111.

113. Non-political party organizations that pay for get-out-the-vote activity with nonfederal money and that also lobby federal officeholders corrupt the federal officeholders they lobby.

RESPONSE: The Commission objects to this request to the extent that it requires information not in the possession of the Commission and to the extent that it raises pure issues of law. The Commission also objects to this request because the term "corrupt" as used therein are vague. Admitted to the extent that there is a potential for corruption or the appearance of corruption when non-political party organizations that pay for get-out-the-vote activity with nonfederal money also lobby federal officeholders.

[EXHIBITS OMITTED]

EXHIBIT
15
Adams

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Senator Mitch McConnell, *et al.*, Plaintiffs, v. Federal Election Commission, *et al.*, Defendants, and Senator John McCain, Senator Russell Feingold, Representative Christopher Shays, Representative Martin Meehan, Senator Olympia Snowe, Senator James Jeffords, Intervenors.	Civil Action No.: 02-CV-582 (CKK, KLH, RJL) Consolidated Action

INTERVENORS' RESPONSES TO CONTENTION INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Local Civil Rule 26, the Court's Order of July 16, 2002 entering the Parties' Stipulation and Order Concerning Initial Disclosures and Discovery Procedures, and the Court's Order of August 15, 2002 regarding contention interrogatories, and subject to and without waiving the General and specific Objections served on Plaintiffs regarding these Interrogatories, Intervenors

Senator John McCain, Senator Russell Feingold, Representative Christopher Shays, Representative Martin Meehan, Senator Olympia Snowe, and Senator James Jeffords ("Intervenors") respond to the contention Interrogatories below. In answering these Interrogatories, Intervenors do not seek to disclose non-public legislative information or waive any Speech or Debate Clause privileges or immunities. Intervenors expressly reserve the right to rely on any of the Responses of the governmental defendants to any of these Interrogatories. Intervenors' General and specific Objections, as set forth in the Objections previously served on Plaintiffs, are to be considered continuing objections to each Interrogatory that follows.

Interrogatories Identified in Section A of the Court's Order of August 15, 2002.

McConnell Interrogatory No. 1: *State and describe in detail each governmental interest that justifies the BCRA or any portion thereof, including in the description a specification of the provisions of the BCRA that each such interest justifies.*

Response: Subject to the Objections above, and without waiving any of them, Intervenors state that, as an examination of the Congressional Record, the legislative history of the Bipartisan Campaign Reform Act ("BCRA") and other information released by Congress in relation to the BCRA and other campaign finance legislation introduced in the 102nd through 107th Congressional sessions, including the Committee on Governmental Affairs United States Senate, 106th Cong., *Investigation of Illegal or Improper Activities in Connection With 1996 Federal Election Campaigns* 723 (Comm. Print 1999) ("Thompson

Committee Report") (collectively the "Legislative History") demonstrates, there are many governmental interests that justify the BCRA. The governmental interests that justify the BCRA include, but are not limited to:

1. preventing the circumvention and evasion of existing campaign finance laws, including but not limited to the Federal Election Campaign Act ("FECA") and Presidential Election Campaign Fund Act ("Fund Act"), while ensuring that candidates, parties, and other participants in the political process have ample opportunity to campaign effectively and to communicate their messages to the electorate;

2. preventing corruption and the appearance of corruption that results from unlimited financial contributions;

3. restoring Americans' faith in the electoral process and decreasing public cynicism about our system, of government;

4. preventing the adverse impact on candidates, parties, federal office holders and other participants in the political process from their participation in activities that create the appearance of corruption;

5. preventing the distortion of the political process that results when the special benefits our legal system bestows upon the corporate and union structures can be converted into political contributions or expenditures, and when corporations and unions can spend general treasury funds on election activity;

6. preventing the corruption and the appearance of corruption that result when corporations and unions spend substantial sums from their treasuries through soft money contributions and Electioneering Communications to influence the outcome of federal elections through Electioneering Communications;

7. preventing the corruption and appearance of corruption that result when groups or individuals spend large sums of money to influence the outcome of federal elections through Electioneering Communications without disclosing who they are and how much they are spending;

8. providing voters with increased information about who is paying for advertisements that have an impact on federal elections;

9. creating a system of disclosure that "provides the electorate with information 'as to where political campaign money comes from and how it is spent by the candidate' in order to aid the voters in evaluating those who seek federal office" and alert "the voter to the interests to which a candidate is most likely to be responsive and thus facilitat[ing] predictions of future performance in office;" *Buckley v. Valeo*, 484 U.S.1, 66-67 (1976) (citations omitted);

10. informing the "electorate by 'exposing large contributions and expenditures to the light of publicity,' which will 'discourage those who would use money for improper purposes,'" *Buckley*, 484 U.S. at 67, and provide "an essential means of gathering the

data necessary to detect violations of the contribution limitations." *Buckley*, 484 U.S. at 67-68;

11. limiting the ubiquitous influence of money, which is a more pervasive form of corruption than quid pro quo corruption; and

12. opening up the democratic system to ordinary citizens who have not had the financial resources to get the attention of candidates, thereby breaking the "cycle where the large contributors get more and more access and the average folks stop trying to get it;" *Landell v. Vermont Public Interest Research Group*, 300 F.3d 129, 2002 U.S. App. LEXIS 15770 at *54 (2nd Cir. 2002) (citation omitted).

Adams Interrogatory No. 1 *State and describe in detail each governmental interest which you contend is served by:*

(a) the increased individual contribution limits in the Bipartisan Campaign Finance Reform Act of 2002 ("BCRA "), Sec. 307; and

(b) the modification of individual contribution limits in response to expenditures from personal funds, as set forth in the BCRA, Secs. 304 (Senate races) and 319 (House races).

Response: See Response to McConnell Interrogatory No. 1 above.

Adams Interrogatory No. 3 *For each of the governmental interests identified in response to Interrogatory No. 1 . . . indicate whether you contend that Congress considered or relied upon that governmental interest . . . in*

determining the dollar amount of the increased contribution limits of BCRA Secs. 304, 307 and 319.

Response: Intervenors contend that the Legislative History reflects the governmental interests Congress considered and relied upon in determining the dollar amount of the increased contribution limits of BCRA.

NAB Interrogatory No. 2: *Identify in detail each governmental purpose or interest that Congress sought to advance in enacting BCRA's restrictions on electioneering communications so as to apply to "broadcast, cable or satellite communication" but not to apply to communications in print such as newspapers or magazines.*

Response: Subject to the Objections above, and without waiving any of them, Intervenors state that, as an examination of the Legislative History demonstrates, there are many governmental interests that justify the BCRA restrictions on electioneering communications. These interests include, but are not limited to:

1. preventing the circumvention and evasion of existing campaign finance laws, including, but not limited to, the Federal Election Campaign Act ("FECA") and Presidential Election Campaign Fund Act ("Fund Act"), while ensuring that candidates have ample opportunity to campaign effectively and to communicate their messages to the electorate;

2. preventing the actual and apparent corruption that results from the expenditures of large sums of money on broadcast, cable and satellite advertisements that have an impact on elections;

3. providing voters with increased information about who is paying for the broadcast, cable and satellite advertisements that have an impact on elections;

4. restoring Americans' faith in the electoral process and decreasing public cynicism about our system of government;

5. preventing the corruption and the appearance of corruption that result when corporations and unions spend substantial sums from their treasuries to influence the outcome of elections; and

6. advancing governmental interests underlying those restrictions by targeting the most acute problems identified by Congress. *See Buckley v. Valeo,* 424 U.S. 1, 105 (1976).

NAB Interrogatory No. 8: *Identify in detail each of Congress's purposes in failing to include communications in print such as newspapers and magazines in BCRA's restrictions on electioneering communications.*

Response: See Response to NAB Interrogatory No. 2.

NAB Interrogatory No. 10: *Identify in detail each governmental purpose or interest that Congress sought to advance in enacting BCRA's requirement that broadcast licensees collect and make publicly available any "request to purchase broadcast time" for communications "relating to any political matter of national importance" irrespective of whether any such communication is in fact broadcast by the licensee.*

Response: Subject to the Objections above, and without waiving any of them, Intervenors incorporate by reference the Objections and governmental interests

identified in Response to NAB Interrogatory No. 2. Without limitation, Intervenors note that the new requirement provides voters and candidates with critical information about who is sponsoring or seeking to sponsor electioneering messages.

California Democratic Party and California Republican Party's Interrogatory No. 1: *State and describe in detail, for each of the following provisions of BCRA, each governmental interest that you claim justifies such provision; and for each such interest, describe separately, specifically and in detail exactly how you believe such provision achieves such interest:*

(a) The prohibition on spending by a state or local party of any non-Federal funds for broadcast communications urging citizens to register to vote within 120 days of an election or to get out and vote, at any time, or promoting the party's views and ideas, without mentioning the name of any candidate for any public office. Such prohibition is set forth in new sections 323(b)(1) and 301(20)(A) of FECA, as amended by section 101(a) of BCRA.

(b) The prohibition on spending by a state or local party of any non-Federal funds in excess of $10,000 from any one person, for communications of any kind urging such citizens to register to vote within 120 days of an election, or to get out to vote at any time, or promoting the party's views and ideas, without mentioning the name of any candidate for any public office. Such prohibition is set forth in new section 323(b)(1) and 301(20)(A) of FECA, as amended and added by section 101(a) of BCRA.

(c) The prohibition on spending by a state or local party of any non-Federal funds for broadcast communications expressly advocating the election or defeat of a

candidate for state or local office, without mentioning any candidate for federal office or otherwise promoting the candidates of any political party for any office, to the extent such communications may constitute "voter identification, get out the vote activity or generic campaign activity" (as set forth in new section 301(20)(A)(ii) of FECA). Such prohibition is set forth in new sections 323(b)(1) and 301(20)(A) and (B) of FECA as added by section 101(a) of BCRA.

(d) The prohibition on spending by a state or local party of any non-Federal funds in excess of $10,000 from any one person, for communications not referencing any candidate for public office, including but not limited to communications which advocate support or defeat of a ballot measure and implicitly contain a get out the vote or generic message promoting the ideas or values of a political party. Such prohibition is set forth in new sections 323(b) and 301(20)(A) of FECA, as added by section 101(a) of BCRA.

(e) The prohibition on spending by a state or local party of any non-Federal funds for broadcast communications not referencing any candidate for public office, including but not limited to communications which advocate support or defeat of a ballot measure and implicitly contain a get out the vote or generic message promoting the ideas or values of a political party. Such prohibition is set forth in new sections 323(b) and 301(20)(A) of FECA, as added by section 101 (a) of BCRA.

(f) The prohibition on spending by a state or local party of any non-Federal funds for the salaries of party employees spending more than 25% of their time in any month on activities in connection with a federal election.

Such prohibition is set forth in new sections 323(b) and 301(20)(A) of FECA, as added by section 101(a) of BCRA.

(g) The prohibitions on the raising, for a state or local party, of "Levin Amendment" contributions otherwise permitted to be raised under new FECA section 323(b)(2), as added by BCRA, by any other state or local party or through joint fundraising activities of state or local parties. Such prohibitions are set forth in new sections 323(b)(2)(B)(iv)(I) and (C)(ii) of FECA, as added by section 101(a) of BCRA;

(h) The prohibition on the providing to a state or local party of "hard money" (i.e., contributions subject to the limitations, prohibitions and reporting requirements of FECA) by any national party committee or any other state, district or local committee of a political party, to pay for any portion of the costs of voter registration activity within 120 days of an election or get out the vote activity at any time, if such "hard money" is to be spend in combination with "Levin Amendment" contributions' (as permitted in new section 323(b)(2) of FECA). Such prohibition is set forth in new section 323(b)(2)(B)(iv) of FECA, added by section 101(a) of BCRA.

(i) The prohibition on officers of state party committees raising non-Federal funds for their own state parties, to the extent such state party officers are or may be also deemed to be officers or agents acting on behalf of a national party committee. Such prohibition is set forth in new section 323(a) of FECA, as added by section 101(a) of BCRA.

(j) The provision prohibiting any federal officeholder or candidate for federal office from soliciting, receiving, directing, transferring or spending of non-Federal funds,

for or by any state or local party. Said provision is set forth in new section 323(e)(1) of FECA, as added by section 101(a) of BCRA.

(k) The prohibition on the making or solicitation of any contributions whatsoever, by any state or local party committee, or any officer or agent thereof, to any organization described in section 501(c) of the Internal Revenue Code that engages in activities or communications to encourage African American, Latino or Asian Pacific Islander American citizens to register to vote within 120 days of a federal election or to get out to vote at any time. Such prohibition is set forth in new section 323(d)(1) of FECA, as added by section 101(a) of BCRA.

(l) The prohibition on the making of independent expenditures by a state or local party for a candidate for federal office before or after such party committee has made an expenditure coordinated with such candidate. Such prohibition is set out in section 315(d)(4) of FECA as added by section 213 of BCRA.

(m) The prohibition on the making of an independent expenditure by a state party committee on behalf of a candidate for federal office if a national party committee has made an expenditure coordinated with such candidate. Such prohibition is set out in section 315(d)(4) of FECA as added by section 213 of BCRA.

(n) The prohibition of the transfer of "hard money," (i.e., contributions meeting the prohibitions and limitations of FECA) by a national party that makes a coordinated expenditures on behalf of a candidate to federal office, to a state or local party that has made or intends to make an independent expenditure with respect to the candidate

Such prohibition is set out in 2 U.S. C. §441 a(d)(4)(c), as added by BCRA section 213.

(o) The failure of BCRA to index for inflation the limitation on contributions to state committees of political parties of $10,000 from any individual in any calendar year, set forth in 2 U.S.C. §441 a(a)(1)(D) as amended by BCRA section 102, while BCRA provides for indexing for inflation of the applicable limits on contributions to national party committees and candidates for federal office.

(p) The failure of BCRA to index for inflation the limitation on contributions to local committees of political parties of $5,000 from any individual in any calendar year, set forth in 2 U.S.C. §441 a(a)(2)(C), while BCRA provides for indexing for inflation of the applicable limits on contributions to national party committees and candidates for federal office.

(q) Any requirement set forth in BCRA that a local party committee that is not a "political committee" within the meaning of FECA register and file disclosure reports with the FEC solely because such committee expends funds for voter registration, get out the vote activity or promotion of the party's views and ideas, without mentioning the name of any federal candidate at any time.

Response: Subject to the Objections above, and without waiving any of them, Intervenors state that, as an examination of the Legislative History demonstrates, there are many governmental interests that justify the BCRA. The governmental interests that justify the BCRA include, but are not limited to, those identified in response to McConnell Interrogatory No. 1 above.

NRA INTERROGATORY NO. 1:

Identify in detail each governmental purpose or interest that Congress sought to advance in enacting BCRA's restrictions on electioneering communications. With respect to your answer to this interrogatory, please;

A. Identify each person on whose testimony you will or may rely in support of this answer;

B. Identify each document on which you will or may rely in support of this answer.

Response: Intervenors continue to object to subparts (A) and (B) of this Interrogatory on the grounds that the requests for identification of witnesses and documents is duplicative of designations already made, is overly burdensome, and is beyond the scope of the Court's Order of August 15, 2002.

See Response to McConnell Interrogatory No. 1 above.

NRA INTERROGATORY NO. 4

Identify in detail each of Congress's purposes in enacting the exemption for news stories, commentaries, or editorials distributed through the facilities of any broadcasting station from BCRA's restrictions on electioneering communications. With respect to your answer to this interrogatory:

A. Identify each person on whose testimony you will or may rely in support of this answer;

B. Identify each document on which you will or may rely in support of this answer.

Response: Intervenors incorporate by reference the Objections and governmental interests identified in the

Response to NRA Interrogatory number 1. Without waiving the foregoing Objections, and without limitation, Intervenors note that exempting the media from BCRA's restriction on electioneering communications allows the broadcast media to report on newsworthy events, thereby providing citizens with information about the elections and candidates. The constitutionality of the media exemption is well-settled, as the U.S. Supreme Court has held: "even under such strict scrutiny, [Michigan's statute excluding the media from expenditure restrictions] pass[es] muster under the Equal Protection Clause." *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990). The Court relied on the "unique role that the press plays in 'informing and educating the public, offering criticism, and providing a forum for discussion and debate.'" *Id.* (citations omitted). The Court has previously recognized that the "press serves and was designed to serve as a powerful antidote to any abuses of power by governmental officials and as a constitutionally chosen means for keeping officials elected by the people responsible to all the people whom they were selected to serve." *Mills v. Alabama*, 384 U.S. 214, 219 (1966). Finally, news stories have been specifically excluded from the definition of "expenditure" under FECA since 1972 (2 U.S.C. § 431(9)(B)(i)).

Other outstanding Interrogatories

Madison Center Interrogatory No. 6 *Identify all conduct that you have engaged in, or wish in the future to engage in, that does not involve "agreement or formal collaboration" but that you believe will be within the scope of "coordinated communications" under BCRA § 214(c).*

Dated this 16th day of September, 2002.

Respectfully submitted,
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[caption omitted]

OBJECTIONS AND RESPONSES OF DEFENDANT FEDERAL ELECTION COMMISSION TO THE FIRST REQUESTS FOR ADMISSION BY PLAINTIFF EMILY ECHOLS, ET AL.

[prefatory material omitted]

GENERAL OBJECTIONS

[general objections omitted]

[end of page 1]

SPECIFIC OBJECTIONS TO PLAINTIFFS' REQUESTS TO ADMIT

1. Emily Echols, Hannah McDow, Isaac McDow, Zachary White, Daniel Solid and Jessica Mitchell are citizens of the United States.

2. Emily Echols, Zachary White and Daniel Solid are residents of Georgia.

3. Hannah McDow and Isaac McDow are residents of Alabama.

4. Jessica Mitchell is a resident of Florida.

5. Emily Echols, Hannah McDow, Isaac McDow, Zachary White, Daniel Solid and Jessica Mitchell are less than eighteen (18) (sic) are minor children.

6. Each of the minor plaintiffs has money that is under their sole direction and control, and that were given to them by others for the purpose of making a "covered political contribution."

RESPONSE TO REQUESTS NOS. 1 THROUGH 6: The Commission has made a reasonable inquiry into these requests, and the information that is readily known or available to it is insufficient to enable the Commission to admit or deny these requests.

7. Each of the minor plaintiffs possesses independence of judgment in the selection of candidates for federal elective office.

[end of page 2]

OBJECTION: The Commission objects to this request because the phrase "independence of judgment" is vague, and the request requires speculation about an individual's state of mind.

ADDITIONAL RESPONSE: The Commission has made a reasonable inquiry into this request and lacks any information whatsoever that would enable the Commission to admit or deny this request.

8. After the effective date of the Act, each of the minor plaintiffs will be completely prohibited from making a covered political contribution.

OBJECTION: The Commission objects to this request on the grounds that it raises a pure issue of law.

ADDITIONAL RESPONSE: None.

9. Each of the minors is deeply and seriously interested in electoral politics and campaigning.

OBJECTION: The Commission objects to this request because the terms "deeply and seriously interested" are vague and the request requires speculation about an individual's state-of-mind.

ADDITIONAL RESPONSE: The Commission has made a reasonable inquiry into this request and lacks any information whatsoever that would enable the Commission to admit or deny this request.

10. The minors have demonstrated their serious interest in electoral politics and campaigning by participating as volunteers in such electoral campaigns.

OBJECTION: The Commission objects to this request because the term "serious interest" is vague.

[end of page 3]

ADDITIONAL RESPONSE: The Commission has made a reasonable inquiry into this request and lacks any information whatsoever that would enable the Commission

to admit or deny this request.

11. Each of the minors consider (sic) the contribution of money to candidates and to committees of political parties a form of expression of support for those candidates and committees.

OBJECTION: The Commission objects to this request because it requires speculation about an individual's state-of-mind.

ADDITIONAL RESPONSE: The Commission has made a reasonable inquiry into this request and lacks any information whatsoever that would enable the Commission to admit or deny this request.

12. Each of the minors consider (sic) the contribution of money to candidates and to committees of political parties a form of association with those candidates and committees.

OBJECTION: See response to Request No. 11.

ADDITIONAL RESPONSE: The Commission has made a reasonable inquiry into this request and lacks any information whatsoever that would enable the Commission to admit or deny this request.

13. Each of the minors consider (sic) withholding the contribution of money from candidates and from committees of political parties a form of expression of opposition to those candidates and committees.

OBJECTION: See response to Request No. 11.

ADDITIONAL RESPONSE: The Commission has made a reasonable inquiry into this request and lacks any information whatsoever that would enable the Commission to admit or deny this request.

[end of page 4]

14. Each of the minors consider (sic) the contribution of money to candidates and to committees of political parties a form of association in support of those candidates and committees.

OBJECTION: See response to Request No. 11.

ADDITIONAL RESPONSE: The Commission has made a reasonable inquiry into this request and lacks any information whatsoever that would enable the Commission to admit or deny this request.

15. Each of the minors intends to make covered political contributions to suitable candidates for federal office during their minority.

OBJECTION: See response to Request No. 11.

ADDITIONAL RESPONSE: The Commission has made a reasonable inquiry into this request and lacks any information whatsoever that would enable the Commission to admit or deny this request.

16. The ban on covered political contributions by minors takes effect on November 6, 2002.

OBJECTION: The Commission objects to this because it requires a pure legal opinion.

ADDITIONAL RESPONSE: None.

17. The colloquy between Senators McCain, Collins and Feingold found in the Congressional Record for March 20, 2002, at pages S2145-S2148, is the sole explanation offered during the debate of the Senate on passage of the Act for the addition of the ban on contributions by minors.

OBJECTION: The Commission objects to this request because it calls for an opinion on pure issues of law, and because the legislative history and the transcript of floor debates of the Senate are matters of public record that speak for themselves.

[end of page 5]

ADDITIONAL RESPONSE: The Commission admits that this colloquy appears to be the only reference to the ban on contributions to candidates and party committees by minors in the Senate floor debate in 2002.

18. No explanation was offered by any member of the

House for the ban on contributions by minors during the debate on passage of the Act in the House of Representatives.

OBJECTION: See Response to Request No. 17.

ADDITIONAL RESPONSE: The Commission admits that no member of the House appears to have offered any explanation on the floor for the ban on contributions to candidates and party committees by minors in 2002.

19. The assertion made by Senator McCain during the Senate debate on passage of the Act that, "[I]ts legislative recommendations to Congress [in1998] cited 'substantial evidence that minors are being used by their parents, or others, to circumvent the limits imposed on contributors'" is incorrect.

OBJECTION: The FEC objects to this request because the pronoun "[I]ts" is vague and lacks an antecedent and because the request mischaracterizes the Senator's statements.

ADDITIONAL RESPONSE: The Commission responds to Request for Admission number 19 as clarified by plaintiffs' counsel at the Meet-and-Confer teleconference: The Commission admits that Senator McCain quoted the words "substantial evidence that minors are being used by their parents, or others, to circumvent the limits imposed on contributors." The Commission also admits that Senator McCain incorrectly attributed the quoted words to the FEC. The quotation instead was from the Recommendations of the Senate's Committee on Governmental Affairs (Thompson Committee) in its 1998 Final Report.

[end of page 6]

20. The FEC has never stated in its legislative recommendations that it had "substantial evidence that minors are being used by their parents, or others, to circumvent the limits imposed on contributors."

OBJECTION: The Commission objects on relevance grounds – whether or not the Commission has ever made any particular legislative recommendations in the past has no bearing on the validity of any provision of law that has been enacted by Congress.

ADDITIONAL RESPONSE: Admitted. See Additional Response to Request number 19 above.

21. One article relied on by Senator McConnell in the Senate debate on passage of the Act, "Members Cash in on Kid Contributions," was written by Alex Knott and appeared in the publication Roll Call.

RESPONSE: The Commission admits that Senator McCain asked for and received consent to have printed in the Congressional Record an article by Alex Knott entitled "Members Cash In On Kid Contributions."

22. That article also served as the basis for an internal referral in the FEC that led to the initiation of MURs 4252, 4253, 4254, and 4255.

RESPONSE: The Commission admits that the article entitled "Members Cash In On Kid Contributions" was the basis for the Commission's initiating inquiries that led to MURs 4252, 4253, and 4254. The Commission denies that the article was the basis for the Commission's initiating MUR 4255.

23. That article incorrectly reports the information relevant to the employer identified by Maryland Lieutenant Governor Kathleen Kennedy Townsend as "student."

RESPONSE: The Commission admits that publicly available Schedule A (Itemized Receipts—Individual Contributions) filed with the Commission on 7/30/93 by the Committee to Re-elect Sen. Edward M. Kennedy '94 lists the employer of Kathleen .

[end of page 7]

Kennedy Townsend as "M.D. Student Svcs. Alliance" and

Ms. Townsend's occupation as "Attorney."

24. In fact, at the time of her Two Hundred fifty Dollar ($250.00) donation to her uncle's senatorial re-election campaign, she listed her employer as Maryland Student Service Alliance, did not list her employment as a "student."

RESPONSE: The Commission has made a reasonable inquiry into this request, and the information that is readily known or available to it is insufficient to enable the Commission to admit or deny whether "she [Ms. Townsend] listed her employer as Maryland Student Service Alliance." The Commission generally does not receive the original or copies of informational sheets that contributors submit to recipient committees. The Commission does receive financial disclosure reports filed by the recipient committees, and those reports often provide employer and occupational information about contributors. See Response to #23.

25. In the Senate debate on passage of the Act, Senator McCain did not mention that one of the articles upon which he relied inaccurately reported the facts it asserted to be true.

OBJECTION: The Commission objects to this request on grounds of lack of foundation, vagueness and relevance. See also objection to Request No. 17.

ADDITIONAL RESPONSE: None.

26. The news reports relied on by Senator McCain included allegations regarding contributions by parents in the name of children in the Croopnick, St.Martins, and Harris families.

OBJECTION: The Commission objects to this request on grounds of lack of foundation, vagueness and relevance – plaintiffs fail to identify the news reports in question.

[end of page 8]

ADDITIONAL RESPONSE: The Commission admits that one of the articles that Senator McCain had placed in the Record, "Members Cash In On Kid Contributions," mentions some members of a family named Croopnick. The

Commission also admits that another article that Senator McCain had placed in the Record, "Sunday Report: Minor Loophole," includes among the individuals mentioned some members of a family named St. Martin. The Commission does not admit that either article discussed a family named "Harris." The Commission does admit that the "Sunday Report: Minor Loophole" article discusses a family named Simmons and that one daughter in that family was referred to as "Andrea Simmons Harris."

27. The Croopnick, St.Martins, and Harris donations were made by adults, not minor children.

OBJECTION: The Commission objects to this request on grounds of lack of foundation, vagueness and relevance – plaintiffs fail to identify the articles in question. In addition, the term "made by" is vague in this context.

ADDITIONAL RESPONSE: The Commission makes this additional response after plaintiffs' counsel specified at the Meet-and-Confer Teleconference the news articles to which the request was referring. The Commission admits that Jennifer Croopnick was at least 20 years old at the time she contributed to the campaign of Rep. Joe Kennedy. The Commission has made a reasonable inquiry and lacks any information whatsoever that would enable the Commission to admit or deny the request as to the ages of members of the St. Martin family and Andrea Simmons Harris.

28. In identifying their occupations on their donation forms, the Croopnick, St. Martins and Harris family members whose donations were at issue identified themselves as students.

[end of page 9]

OBJECTION: The Commission objects to this request on grounds of lack of foundation, vagueness and relevance – plaintiffs fail to identify the articles in question.

ADDITIONAL RESPONSE: The Commission has

made a reasonable inquiry into this request, and the information that is readily known or available to it is insufficient to enable the Commission to admit or deny whether "the Croopnick, St. Martins and Harris family members . . . identified themselves as students" "on their donation forms." The Commission generally does not receive the original or copies of the informational sheets that contributors submit to recipient committees. The Commission does receive financial disclosure reports filed by the recipient committees, and those reports often provide employer and occupational information about contributors. Some, although not all, of the recipient committees that listed Steven P. St. Martin on their publicly available reports as a contributor gave his occupation as "student." The occupation of Andrea Simmons Harris was given as "student" on at least one publicly available committee report during the 1991-92 election cycle. Citizens for Joe Kennedy listed Jennifer Croopnick as a contributor during the 1989-90 and 1993-94 election cycles and both times gave Ms. Croopnick's occupation as "student."

29. The FEC regulations in existence until the effective date of the Act do not require that the age of donors to candidates or committees of political parties be revealed.

OBJECTION: The Commission objects to this request on the grounds that it raises a pure issue of law.

ADDITIONAL RESPONSE: None.

30. An adult whose occupation is that of a student may identify themselves on a donation report as a "student."

[end of page 10]

OBJECTION: The Commission objects to this request on the grounds that it raises a pure issue of law.

ADDITIONAL RESPONSE: The Commission admits that certain adults whose occupation is that of student might choose at times to identify their occupation on a donation

report as "student."

31. Not all persons identified as "students" on political donation reporting forms are minor children.

RESPONSE: Admitted.

32. The Act completely prohibits minors aged seventeen and younger from making covered political contributions.

OBJECTION: The Commission objects to this request on the grounds that it raises a pure issue of law.

ADDITIONAL RESPONSE: None.

33. Another provision of federal law, Title 2 U.S.C. Section 441f, already prohibits giving a covered political contribution in the name of another.

OBJECTION: The Commission objects to this request on the grounds that it raises a pure issue of law.

ADDITIONAL RESPONSE: None.

34. Title 2 U.S.C. Section 441f does not permit parents to make covered political contributions in the name of their minor children.

OBJECTION: The Commission objects to this request on the grounds that it raises a pure issue of law.

ADDITIONAL RESPONSE: None.

35. The Act makes no exception allowing minors who are serving as enlisted personnel in the United States Army, Navy, Air Force, Marine Corps., or Coast Guard to make covered political contributions.

[end of page 11]

OBJECTION: The Commission objects to this request on the grounds that it raises a pure issue of law.

ADDITIONAL RESPONSE: None.

36. The Act makes no exception to allow covered political contributions during primary elections by minors who will be eligible to vote in a general election by reason of attaining their majority after the primary election.

OBJECTION: The Commission objects to this request

on the grounds that it raises a pure issue of law.

ADDITIONAL RESPONSE: None.

37. The Act makes no exception to allow covered political contributions by those minors who possess their own financial resources and who make the decision to do so independently of the direction and control of others.

OBJECTION: The Commission objects to this request on the grounds that it raises a pure issue of law.

ADDITIONAL RESPONSE: None.

38. The Act does not grant to the FEC any discretion to allow for donations from those particular minors who possess maturity of judgment and independence from parental direction.

OBJECTION: The Commission objects to this request on the grounds that it raises a pure issue of law.

ADDITIONAL RESPONSE: None.

39. Congress never rejected, by a vote in either House, any alternative to the complete prohibition of political donations by minors.

OBJECTION: The Commission objects to this Request to Admit on grounds of relevance. See also objection to Request No. 17.

ADDITIONAL RESPONSE: None.

[end of page 12]

40. Congress made no express legislative finding justifying the Act's prohibition on political donations by minors.

OBJECTION: The Commission objects to this Request to Admit on grounds of relevance. See also objection to Request No. 17.

ADDITIONAL RESPONSE: None.

41. No present member of Congress and other elected federal officer has engaged in any corrupt act as a result of contributions by minors to candidates or contributions or donations by minors to committees of political parties.

OBJECTION: The Commission objects to this request because the terms "any corrupt act" and "as a result of" are vague.

ADDITIONAL RESPONSE: The Commission has made a reasonable inquiry into this request, and the information that is readily known or available to it is insufficient to enable the Commission to admit or deny the request.

42. No present member of Congress or any other elected federal officer has an appearance of corruption as a result of contributions by minors to candidates or contributions or donations by minors to committees of political parties.

OBJECTION: The Commission objects to this request because the terms "has an appearance of corruption" and "as a result of" are vague.

ADDITIONAL RESPONSE: See Additional Response to No. 41.

43. Some persons who will be eighteen years of age at the time of a general election, and therefore eligible to register to vote in an election for federal office, will still be less than eighteen years of age during the campaign for the primary election of a party's candidate.

OBJECTION: The Commission objects to this request on grounds of relevance and because it is hypothetical.

[end of page 13]

ADDITIONAL RESPONSE: The Commission admits that unknown numbers of citizens are likely to fall within the described categories each year.

44. In the circumstances described in the immediately preceding Request to Admit, a minor will be prohibited from giving financial support to the primary candidate of their choice.

OBJECTION: The Commission objects to this request because it is hypothetical and raises a pure issue of law.

ADDITIONAL RESPONSE: None.

45. The FEC has proposed to Congress that it adopt legislation regarding covered political contributions by minors that is less restrictive than the Act.

RESPONSE: The Commission admits that it has made recommendations to Congress regarding covered political contributions by minors that differ from the BCRA.

46. The FEC has submitted Annual Reports to Congress and to the President in compliance with the requirements of law.

RESPONSE: Admitted.

47. In its 1992 Annual Report, the FEC recommended that Congress establish a minimum, but unspecified, age for contributors.

RESPONSE: Admitted.

48. In its explanation of the recommendation for the 1992 Annual Report, the FEC stated: "The Commission has found that contributions are sometimes given by parents in their children's names. Congress should address this potential abuse by establishing a minimum age for contributors, or otherwise provide guidelines ensuring that parents are not making contributions in the name of another."

RESPONSE: Admitted.

49. In each of its Annual Reports for the years 1993, 1994, 1995, 1996, 1997 and 1998 the FEC recommended that Congress establish a presumption that contributors below age 16 are not making contributions on their own behalf.

RESPONSE: Admitted.

[end of page 14]

50. In its explanation of the recommendation for the 1993-1998 Annual Reports, the FEC stated: "The Commission has found that contributions are sometimes given by parents in their children's names. Congress should address this potential abuse by establishing a minimum age for contributors, or otherwise provide guidelines ensuring that

parents are not making contributions in the name of another."

RESPONSE: Admitted.

51. In its 1999 and 2000 Annual reports, the FEC recommended that Congress establish a minimum age of 16 for making contributions.

RESPONSE: Admitted.

52. In its explanation of the recommendation for the 1999 and 2000 Annual Reports, the FEC stated: "The Commission has found that contributions are sometimes given by parents in their children's names. Congress should address this potential abuse by establishing a minimum age of 16 for contributors, or otherwise provide guidelines ensuring that parents are not making contributions in the name of another."

RESPONSE: Admitted.

53. On several occasions in the past, the FEC has opened MURs (Matters Under Review) in circumstances allegedly involving campaign contributions by parents in the name of their minor children.

RESPONSE: Admitted.

54. Such MURS could only be opened if there existed probable cause to believe that a violation of FECA or of FEC regulations had occurred.

RESPONSE: Denied. The Commission initiates an investigation only upon the affirmative vote of at least four of its members that there is reason to believe that a person has committed or is about to commit a violation.

55. A covered political contribution made by a parent in the name of a minor child violates 2 U.S.C. §441f.

OBJECTION: The Commission objects to this request because it is hypothetical and raises a pure issue of law.

ADDITIONAL RESPONSE: None.

[end of page 15]

56. In MUR 4484, the FEC investigated donations made by the Respondent, Stewart Bainum, in the name of his infant son, to the campaigns of four candidates for office.

RESPONSE: Admitted.

57. In MUR 4484, the FEC and the Respondent, Stewart Bainum, entered into a conciliation Agreement, by which Agreement, Stewart Bainum acknowledged donating Four thousand Dollars ($ 4000.00) in the name of his infant son, to the campaigns of four candidates for office.

RESPONSE: Admitted.

58. As part of the Conciliation Agreement in MUR 4484, Mr. Bainum agreed to pay a civil penalty to the FEC in the amount of Four thousand Dollars ($4000.00).

RESPONSE: Admitted.

59. The civil penalty agreed to in MUR 4484 is the only instance in which the FEC has assessed a civil penalty against a parent based on the covered political contribution by that parent in the name of a minor child.

RESPONSE: Denied. The Commission does not "assess[ ] a civil penalty" in conciliation agreements. The Commission further responds that the conciliation agreement in MUR 4484 is the only instance the Commission has thus far found in its search of its MUR records concerning a parent's contribution in the name of his child in which the respondent agreed to pay a proposed civil penalty.

60. Of all the MURs opened and investigated by the FEC, five percent or fewer involved covered political contributions by minors or by parents made in the name of their minor children.

RESPONSE: Admitted.

61. Of all the MURs opened and investigated by the FEC, four percent or fewer involved covered political contributions by minors or by parents made in the name of their minor children.

RESPONSE: Admitted.

[end of page 16]

62. Of all the MURs opened and investigated by the FEC, three percent or fewer involved covered political contributions by minors or by parents made in the name of their minor children.

RESPONSE: Admitted.

63. Of all the MURs opened and investigated by the FEC, two percent or fewer involved covered political contributions by minors or by parents made in the name of their minor children.

RESPONSE: Admitted.

64. Of all the MURs opened and investigated by the FEC, one percent or fewer involved covered political contributions by minors or by parents made in the name of their minor children.

RESPONSE: Admitted.

65. Every other MUR that has been concluded by the FEC involving covered political contributions by minor children or by their parents in the name of minor children, including those that were the subject of the news reports relied on by Senator McCain in the debate on passage of the Act, have been resolved without the imposition of civil penalties, fines or other monetary sanctions.

RESPONSE: Denied. The Commission does not "impos[e]" monetary sanctions in conciliating a MUR. See Response to Request #59.

66. Persons under the age of eighteen (18) may be eligible to enlist in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, if they are otherwise qualified and have, or do not need, parental consent.

OBJECTION: The Commission objects to this request on grounds that eligibility to enlist in the armed forces is not relevant to the constitutionality of BCRA, that this request is

overbroad and that this request raises a pure question of law.

ADDITIONAL RESPONSE: None.

67. Persons under the age of eighteen (18) are permitted, according to the laws of the State or territory where they reside, to obtain a permit for the operation of a motor vehicle.

[end of page 17]

OBJECTION: The Commission objects to this request on grounds that the ability to obtain a motor vehicle permit is not relevant to the constitutionality of BCRA, that this request is overbroad, and that this request raises pure questions of law.

ADDITIONAL RESPONSE: None.

68. Persons under the age of eighteen (18) are permitted, according to the laws of the State or territory where they reside, to consent to medical treatment.

OBJECTION: The Commission objects to this request on grounds that the ability to consent to medical treatment is not relevant to the constitutionality of BCRA, that this request is overbroad, and that this request raises pure questions of law.

ADDITIONAL RESPONSE: None.

69. Persons under the age of eighteen (18) are permitted, according to the laws of the State or territory where they reside, to consent to mental health treatment.

OBJECTION: The Commission objects to this request on grounds that the ability to consent to mental health treatment is not relevant to the constitutionality of BCRA, that this request is overbroad, and that this request raises pure questions of law.

ADDITIONAL RESPONSE: None.

70. Persons under the age of eighteen (18) are permitted, according to the laws of the State or territory where they reside, to consent to reproductive health care services.

OBJECTION: The Commission objects to this request on the grounds that the ability to obtain a consent to reproductive health care services is not relevant to the constitutionality of BCRA, that this request is overbroad, and that this request raises pure questions of law.

ADDITIONAL RESPONSE: None.

71. Persons under the age of eighteen (18) are permitted, according to the laws of the State or territory where they reside, to enter into the labor force and seek and hold gainful employment.

[end of page 18]

OBJECTION: The Commission objects to this request on grounds that the ability to enter the work force is not relevant to the constitutionality of BCRA, that this request is overbroad, and that this request raises pure questions of law.

ADDITIONAL RESPONSE: None.

72. Persons under the age of eighteen (18) are permitted, according to the laws of the State of territory where they reside, to obtain a declaratory judgment from a court of competent jurisdiction that they are emancipated from their parents.

OBJECTION: The Commission objects to this request on the grounds that the ability to obtain a declaratory judgment of emancipation is not relevant to the constitutionality of BCRA, that this request is overbroad, and that this request raises pure questions of law.

ADDITIONAL RESPONSE: None.

73. None of the fact witnesses identified by you for possible testimony in the trial of this matter has relevant, admissible testimony regarding the ban on covered political contributions by minors.

RESPONSE: Admitted.

74. None of the expert witnesses identified by you for possible testimony in the trial of this matter has relevant,

admissible testimony regarding the ban on covered political contributions by minors.

RESPONSE: Admitted.

75. For each of the minor plaintiffs, the act of making a covered political contribution will be prohibited by federal law upon the effective date of the Act.

OBJECTION: The Commission objects to this request because it raises a pure question of law.

ADDITIONAL RESPONSE: None.

[end of page 19]

76. For each of the minor plaintiffs, the act of making a covered political contribution expresses their support for the beliefs, views, and opinions of the candidate for federal office or the committee of a political party.

OBJECTION: The Commission objects to this request because it requires speculation about an individual's subjective state-of-mind.

ADDITIONAL RESPONSE: The Commission has made a reasonable inquiry into this request and lacks any information whatsoever that would enable the Commission to admit or deny this request regarding the beliefs, views, and opinions of these plaintiffs.

77. For each of the minor plaintiffs, the act of making a covered contribution expresses their support for the election of a candidate for federal office or the committee of a political party.

OBJECTION: See Response to the preceding Request.

ADDITIONAL RESPONSE: The Commission has made a reasonable inquiry into this request and lacks any information whatsoever that would enable the Commission to admit or deny this request regarding the beliefs of these plaintiffs.

78. For each of the minor plaintiffs, the act of making a covered political contribution evidences the agreement of the

minor plaintiff with the beliefs, views, and opinions of the candidate for federal office or the committee of a political party.

OBJECTION: See response to Request No. 76.

ADDITIONAL RESPONSE: The Commission has made a reasonable inquiry into this request and lacks any information that would enable the Commission to admit or deny this request regarding the beliefs, views, and opinions of any of these plaintiffs.

79. For each of the minor plaintiffs, the restriction imposed by the Act would be inapplicable to them but for their being less than eighteen (18) years of age.

OBJECTION: The Commission objects to this request because it raises a pure question of law.

ADDITIONAL RESPONSE: None.

[end of page 20]

80. Making a political contribution is an exercise of fundamental constitutional rights.

OBJECTION: The Commission objects to this request because it raises a pure question of law.

ADDITIONAL RESPONSE: None.

81. The Act treats the minor plaintiffs differently from citizens of the United States who have attained eighteen (18) years of age in the exercise of fundamental constitutional rights based upon their age.

OBJECTION: The Commission objects to this request on grounds that it raises a pure question of law.

ADDITIONAL RESPONSE: None.

82. Because the Act completely prohibits the minors from engaging in a kind of speech, namely the making of covered political contributions, it is subject to strict scrutiny.

OBJECTION: The Commission objects to this request on grounds that it raises a pure question of law.

ADDITIONAL RESPONSE: None.

83. Because the Act burdens the exercise of fundamental constitutional rights, it is subject to strict scrutiny.

OBJECTION: The Commission objects to this request on grounds that it raises a pure question of law.

ADDITIONAL RESPONSE: None.

84. To survive strict scrutiny, the ban on the making of covered political contributions by minors must be narrowly tailored to serve compelling government interests.

OBJECTION: The Commission objects to this request on grounds that it raises a pure question of law.

[end of page 21]

ADDITIONAL RESPONSE: None.

85. Alternatives to the complete prohibition of covered political contributions by minors exist.

OBJECTION: The Commission objects to this request because the terms "alternatives" and "exist" are vague, and because it raises a pure question of law.

ADDITIONAL RESPONSE: None.

86. Many of the existing alternatives to such a complete prohibition are adequate to insure that the interests of the government that motivated Congress to enact the Act would be satisfied.

OBJECTION: The Commission objects to this request on grounds that it raises a pure question of law. The request is also vague because it fails to identify any "alternative," fails to identify the "interests of the government," and because the term "adequate to insure" is vague.

ADDITIONAL RESPONSE: None.

87. No less restrictive alternative to the complete prohibition on covered political contributions by minors was considered by Congress during the floor debates of either House.

OBJECTION: The Commission objects to this request on grounds that the term "less restrictive" is vague. See also objection to Request No. 17.

ADDITIONAL RESPONSE: None.

88. Enforcing current restrictions on giving in the name of another is less restrictive of the rights of minors to make covered political contributions than the complete prohibition imposed by the Act.

OBJECTION: The Commission objects to this request on grounds that it raises a pure question of law.

ADDITIONAL RESPONSE: None.

[end of page 22]

89. A rebuttable presumption that minors under a selected age are not making a covered political donation under their own direction and control is less restrictive of the rights of minors to make covered political contributions than the complete prohibition imposed by the Act.

OBJECTION: The Commission objects to this request on grounds that it raises a pure question of law.

ADDITIONAL RESPONSE: None.

90. Allowing minors who will be eligible to vote in the general election for a federal office to donate to make covered political contributions during the primary and general elections is less restrictive of the rights of minors to make political contributions than the complete prohibition imposed by he Act.

OBJECTION: The Commission objects to this request on grounds that it raises a pure question of law.

ADDITIONAL RESPONSE: None.

91. Prosecuting persons who make a contribution in the name of another is a less restrictive means of insuring that the covered political contributions of minors are made by those minors from their independently controlled funds at their own direction.

OBJECTION: The Commission objects to this request on grounds that it raises a pure question of law.

ADDITIONAL RESPONSE: None.

ADDITIONAL INTERROGATORY

[Additional interrogatory and response and objection thereto omitted]

[end of page 23]

[end of page 24]

REQUEST TO PRODUCE DOCUMENTS

[request to produce and objection thereto omitted]

[subscription and signature omitted]

[caption omitted]

RESPONSES OF DEFENDANT UNITED STATES TO PLAINTIFFS' REQUESTS TO ADMIT, SUPPLEMENTAL INTERROGATORY, AND REQUEST TO PRODUCE TO ALL DEFENDANTS

[end of page 1]

[prefatory matter omitted]

REQUESTS TO ADMIT

1. Emily Echols, Hanna McDow, Isaac McDow, Zachary White, Daniel Solid and Jessica Mitchell are citizens of the United States.

RESPONSE: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 1, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully admit or deny the subject matter of Request to Admit No. 1. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry reasonable in the extraordinary circumstances of this litigation, and the information known or readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 1.

2. Emily Echols, Zachary White and Daniel Solid are residents of Georgia.

RESPONSE: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 2, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully admit or deny the subject matter of Request to Admit No. 2. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry reasonable in the extraordinary circumstances of this litigation, and the information known or readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 2.

3. Hannah McDow and Isaac McDow are residents of

Alabama.

RESPONSE: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 3, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully admit or deny the subject matter of Request to Admit No. 3. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry

[end of page 2]

reasonable in the extraordinary circumstances of this litigation, and the information known or readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 3.

4. Jessica Mitchell is a resident of Florida.

RESPONSE: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 4, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully admit or deny the subject matter of Request to Admit No. 4. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry reasonable in the extraordinary circumstances of this litigation, and the information known or readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 4.

5. Emily Echols, Hanna McDow, Isaac McDow, Zachary White, Daniel Solid and Jessica Mitchell are less then eighteen (18) are minor children. (sic)

RESPONSE: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 5, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully admit or deny the subject matter of Request to Admit No. 5. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry reasonable in the extraordinary

circumstances of this litigation, and the information known or readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 5.

6. Each of the minor plaintiffs has money that is under their sole direction and control and that were not given to them by others for the purpose of making a "covered political contribution."

[end of page 3]

RESPONSE: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 6, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully admit or deny the subject matter of Request to Admit No. 6. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry reasonable in the extraordinary circumstances of this litigation, and the information known or readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 6.

7. Each of the minor plaintiffs possesses independence of judgment in the selection of candidates for federal elective office.

RESPONSE: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 7, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully admit or deny the subject matter of Request to Admit No. 7. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry reasonable in the extraordinary circumstances of this litigation, and the information known or readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 7.

8. After the effective date of the Act, each of the minor plaintiffs will be completely prohibited from making a covered political contribution.

RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 8.

9. Each of the minors is deeply and seriously interested in electoral politics and campaigning.

RESPONSE: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 9, the United States lacks the necessary information and knowledge to

[end of page 4]

respond, and consequently cannot truthfully admit or deny the subject matter of Request to Admit No. 9. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry reasonable in the extraordinary circumstances of this litigation, and the information known or readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 9.

10. The minors have demonstrated their serious interest in electoral politics and campaigning by participating as volunteers in such electoral campaigns.

RESPONSE: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 10, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully admit or deny the subject matter of Request to Admit No. 10. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry reasonable in the extraordinary circumstances of this litigation, and the information known or readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 10.

11. Each of the minors consider the contribution of money to candidates and to committees of political parties a form of expression of support for those candidates and committees.

RESPONSE: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No.

11, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully admit or deny the subject matter of Request to Admit No. 11. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry reasonable in the extraordinary circumstances of this litigation, and the information known or readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 11.
[end of page 5]

12. Each of the minors consider (sic) the contribution of money to candidates and to committees of political parties a form of association with those candidates and committees.

RESPONSE: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 12, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully admit or deny the subject matter of Request to Admit No. 12. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry reasonable in the extraordinary circumstances of this litigation, and the information known or readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 12.

13. Each of the minors consider withholding the contribution of money from candidates and from committees of political parties a form of expression of opposition to those candidates and committees.

RESPONSE: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 13, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully admit or deny the subject matter of Request to Admit No. 13. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry reasonable in the extraordinary circumstances of this litigation, and the information known

or readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 13.

14. Each of the minors consider the contribution of money to candidates and to committees of political parties a form of association in support of those candidates and committees.

RESPONSE: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 14, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully admit or deny the subject matter of Request to
[end of page 6]
Admit No. 14. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry reasonable in the extraordinary circumstances of this litigation, and the information known or readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 14.

15. Each of the minors intends to make covered political contributions to suitable candidates for federal office during their minority.

RESPONSE: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 15, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully admit or deny the subject matter of Request to Admit No. 15. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry reasonable in the extraordinary circumstances of this litigation, and the information known or readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 15.

16. The ban on covered political contributions by minors takes effect on November 6, 2002.

RESPONSE: Subject to the Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No.

16, the United States admits that BCRA § 318 concerning contributions by minors takes effect in accordance with BCRA § 402(a)(4).

17. The colloquy between Senators McCain, Collins and Feingold found in the Congressional Record for March 20, 2002, at pages S2145-S2148, is the sole explanation offered during the debate of the Senate on passage of the Act for the addition of the ban on contributions by minors.

RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 17.

18. No explanation was offered by any member of the House for the ban on contributions by minors during the debate on passage of the Act in the House of Representatives.

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RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 18.

19. The assertion made my Senator McCain during the Senate debate on passage of the Act that, "[I]ts legislative recommendations to Congress [in1998] cited 'substantial evidence that minors are being used by their parents, or others, to circumvent the limits imposed on contributors'" is incorrect.

RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 19.

20. The FEC has never stated in its legislative recommendations that it had "substantial evidence that minors are being used by their parents, or others, to circumvent the limits imposed on contributors."

RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 20.

21. One article relied on by Senator McCain in the Senate debate on passage of the Act, "Members Cash in on Kid Contributions," was written by Alex Knott and appeared in

the publication, Roll Call.

RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 21.

22. That article also served as the basis for an internal referral in the FEC that led to the initiation of MURs 4252, 4253,4254,4255.

RESPONSE: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 22, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully admit or deny the subject matter of Request to Admit No. 22. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry reasonable in the extraordinary circumstances of this litigation, and the information known or readily obtainable by the United States is insufficient for the United States to admit or deny

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Request to Admit No. 22. The United States, however, adopts the response of the FEC to this request.

23. That article incorrectly reports the information relevant to the employer identified by Maryland Lieutenant Governor Kathleen Kennedy Townsend as a "student."

RESPONSE: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 23, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully admit or deny the subject matter of Request to Admit No. 23. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry reasonable in the extraordinary circumstances of this litigation, and the information known or readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 23. The United States, however, adopts the response of the FEC to this request.

24. In fact, at the time of her Two Hundred Fifty Dollar ($250.00) donation to her uncle's senatorial re-election campaign, she listed her employer as Maryland Student Service Alliance, did not list her employment as a "student."

RESPONSE: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 24, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully admit or deny the subject matter of Request to Admit No. 24. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry reasonable in the extraordinary circumstances of this litigation, and the information known or readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 24. The United States, however, adopts the response of the FEC to this request.

25. In the Senate debate on passage of the Act, Senator McCain did not mention that one of the articles upon which he relied inaccurately reported the facts it asserted to be true. [end of page 9]

RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 25.

26. The news reports relied on by Senator McCain included allegations regarding contributions by parents in the name of children in the Croopnick, St. Martins, and Harris families.

RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 26.

27. The Croopnick, St. Martins, and Harris donations were made by adults, not minor children.

RESPONSE: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 27, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully

admit or deny the subject matter of Request to Admit No. 27. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry reasonable in the extraordinary circumstances of this litigation, and the information known or readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 27. The United States, however, adopts the response of the FEC to this request.

28. In identifying their occupations on their donation forms, the Croopnick, St. Martins and Harris family members whose donations were at issue identified themselves as students.

RESPONSE: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 28, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully admit or deny the subject matter of Request to Admit No. 28. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry reasonable in the extraordinary circumstances of this litigation, and the information known or

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readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 28. The United States, however, adopts the response of the FEC to this request.

29. The FEC regulations in existence until the effective date of the Act do not require that the age of donors to candidates or committees of political parties be revealed.

RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 29.

30. An adult whose occupation is that of a student may identify themselves on a donation report as a "student."

RESPONSE: Subject to the Sept. 3, 2002 General

Objections and Specific Objections to Request to Admit No. 30, admit.

31. Not all persons identified as "students" on political donation reporting forms are minor children.

RESPONSE: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 31, admit.

32. The Act completely prohibits minors aged seventeen and younger from making covered political contributions.

RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 32.

33. Another provision of federal law, Title 2 U.S.C. Section 441f, already prohibits giving a covered political contribution in the name of another.

RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 33.

34. Title 2 U.S.C. Section 441f does not permit parents to make covered political contributions in the name of their minor children.

[end of page 11]

RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 34.

35. The Act makes no exception allowing minors who are serving as enlisted personnel in the United States Army, Navy, Air Force, Marine Corps., or Coast Guard to make covered political contributions.

RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 35.

36. The Act makes no exception to allow covered political contributions during primary elections by minors who will be eligible to vote in a general election by reason of attaining their majority after the primary election.

RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 36.

37. The Act makes no exception to allow covered political contributions by those minors who possess their own financial resources and who make the decision to do so independently of the direction and control of others.

RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 37.

38. The Act does not grant to the FEC any discretion to allow for donations from those particular minors who possess maturity of judgment and independence from parental direction.

RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 38.

39. Congress never rejected, by a vote either House, any alternative to the complete prohibition of political donations by minors.

RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 39.

40. Congress made no express legislative finding justifying the Act's prohibition on political donations by minors.

[end of page 12]

RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 40.

41. No present member of Congress and other elected federal officer has engaged in any corrupt act as a result of contributions by minors to candidates or contributions or donations by minors to committees of political parties.

RESPONSE: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 41, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully admit or deny the subject matter of Request to Admit No. 41. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry reasonable in the extraordinary

circumstances of this litigation, and the information known or readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 41.

42. No present member of Congress or any other elected federal officer has an appearance of corruption as a result of contributions by minors to candidates or contributions or donations by minors to committees of political parties.

RESPONSE: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 42, denied. *See* Response to Request to Admit No. 53.

43. Some persons who will be eighteen years of age at the time of a general election, and therefore eligible to register to vote in an election for federal office, will still be less than eighteen years of age during the campaign for the primary election of a party's candidate.

RESPONSE: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 43, admit.

44. In the circumstances described in the immediately preceding Request to Admit, a minor will be prohibited from giving financial support to the primary candidate of their choice.

RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 44.

[end of page 13]

45. The FEC has proposed to Congress that it adopt legislation regarding covered political contributions by minors that is less restrictive than the Act.

RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 45.

46. The FEC has submitted Annual Reports to Congress and to the President in compliance with the requirements of law.

RESPONSE: Subject to the Sept. 3, 2002 General

Objections and Specific Objections to Request to Admit No. 46, admit.

47. In its 1992 Annual Report, the FEC recommended that Congress establish a minimum, but unspecified, age for contributors.

RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 47. The United States, however, adopts the response of the FEC to this request.

48. In its explanation of the recommendation for the 1992 Annual Report, the FEC stated: "The Commission has found that contributions are sometimes given by parents in their children's names. Congress should address this potential abuse by establishing a minimum age for contributors, or otherwise provide guidelines ensuring that parents are not making contributions in the name of another."

RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 48. The United States, however, adopts the response of the FEC to this request.

49. In each of its Annual Reports for the years 1993, 1994, 1995, 1996, 1997 and 1998 the FEC recommended that Congress establish a presumption that contributors below age 16 are not making contributions on their own behalf.

RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 49. The United States, however, adopts the response of the FEC to this request.

50. In its explanation of the recommendations for the 1993-1998 Annual Reports, the FEC stated: "The Commission has found that contributions are sometimes given by parents in their children's names. Congress should address this potential abuse by establishing a minimum age

for contributors, or otherwise provide guidelines ensuring that parents are not making contributions in the name of another."
[end of page 14]

RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 50. The United States, however, adopts the response of the FEC to this request.

51. In its 1999 and 2000 Annual Reports, the FEC recommended that Congress establish a minimum age of 16 for making contributions.

RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 51. The United States, however, adopts the response of the FEC to this request.

52. In its explanation of the recommendations for the 1999 and 2000 Annual Reports, the FEC stated: "The Commission has found that contributions are sometimes given by parents in their children's names. Congress should address this potential abuse by establishing a minimum age of 16 for contributors, or otherwise provide guidelines ensuring that parents are not making contributions in the name of another."

RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 52. The United States, however, adopts the response of the FEC to this request.

53. On several occasions in the past, the FEC has opened MURs (Matters Under Review) in circumstances allegedly involving campaign contributions by parents in the name of their minor children.

RESPONSE: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 53, admit.

54. Such MURs could only be opened if there existed a probable cause to believe that a violation of FECA or of FEC regulations had occurred.

RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 54. The United States, however, adopts the response of the FEC to this request.

55. A covered political contribution made by a parent in the name of a minor child violates Title 2 U.S.C. Section 441f.

RESPONSE: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 55.

56. In MUR 4484, the FEC investigation [*sic*] donations made by the Respondent, Stewart Bainum, in the name of his infant son, to the campaigns of four candidates for office.
[end of page 15]

RESPONSE: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 56, admit that in MUR 4484, the FEC investigated donations made by the Respondent, Stewart Bainum, in the name of his infant son, to the campaigns of four candidates for office.

57. In MUR 4484, the FEC and the Respondent, Stewart Bainum, entered into a Conciliation Agreement, by which Agreement, Stewart Bainum acknowledged donated Four Thousand Dollars ($4000.00) in the name of another to federal candidate committees.

RESPONSE: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 57, admit.

58. As part of the Conciliation Agreement in MUR 4484, Mr. Bainum agreed to pay a civil penalty to the FEC in the amount of Four Thousand Dollars ($4000.00).

OBJECTION: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No.

58, admit.

59. The civil penalty agreed to in MUR 4484 is the only instance in which the FEC has assessed a civil penalty against a parent based on the covered political contribution by that parent in the name of a minor child.

OBJECTION: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 59, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully admit or deny the subject matter of Request to Admit No. 59. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry reasonable in the extraordinary circumstances of this litigation, and the information known or readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 59. The United States, however, adopts the response of the FEC to this request.

60. Of all MURs opened and investigated by the FEC, five percent or fewer involved covered political contributions by minors or by parents in the name of their minor children.
[end of page 16]

OBJECTION: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 60, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully admit or deny the subject matter of Request to Admit No. 60. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry reasonable in the extraordinary circumstances of this litigation, and the information known or readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 60. The United States, however, adopts the response of the FEC to this request.

61. Of all MURs opened and investigated by the FEC,

four percent or fewer involved covered political contributions by minors or by parents in the name of their minor children.

OBJECTION: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 61, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully admit or deny the subject matter of Request to Admit No. 61. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry reasonable in the extraordinary circumstances of this litigation, and the information known or readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 61. The United States, however, adopts the response of the FEC to this request.

62. Of all MURs opened and investigated by the FEC, three percent or fewer involved covered political contributions by minors or by parents in the name of their minor children.

OBJECTION: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 62, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully admit or deny the subject matter of Request to Admit No. 62. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry
[end of page 17]
reasonable in the extraordinary circumstances of this litigation, and the information known or readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 62. The United States, however, adopts the response of the FEC to this request.

63. Of all MURs opened and investigated by the FEC, two percent or fewer involved covered political contributions

by minors or by parents in the name of their minor children.

OBJECTION: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 63, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully admit or deny the subject matter of Request to Admit No. 63. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry reasonable in the extraordinary circumstances of this litigation, and the information known or readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 63. The United States, however, adopts the response of the FEC to this request.

64. Of all MURs opened and investigated by the FEC, one percent or fewer involved covered political contributions by minors or by parents in the name of their minor children.

OBJECTION: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 64, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully admit or deny the subject matter of Request to Admit No. 64. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry reasonable in the extraordinary circumstances of this litigation, and the information known or readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 64. The United States, however, adopts the response of the FEC to this request.

[end of page 18]

65. Every other MUR that has been concluded by the FEC involving covered political contributions by minor children or by parents in the name of their minor children, including those that were the subject of the news reports relied on by Senator McCain in the debate on passage of the Act, have

been resolved without the imposition of civil penalties, fines or other monetary sanctions.

OBJECTION: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 65, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully admit or deny the subject matter of Request to Admit No. 65. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry reasonable in the extraordinary circumstances of this litigation, and the information known or readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 65. The United States, however, adopts the response of the FEC to this request.

66. Persons under the age of eighteen (18) may be eligible to enlist in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, if they are otherwise qualified and have, or do not need, parental consent.

OBJECTION: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 66.

67. Persons under the age of eighteen (18) are permitted, according to the laws of the State or territory where they reside, to obtain a permit for the operation of a motor vehicle.

OBJECTION: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 67.

68. Persons under the age of eighteen (18) are permitted, according to the laws of the State or territory where they reside, to consent to medical treatment.

OBJECTION: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 68.

[end of page 19]

69. Persons under the age of eighteen (18) are permitted, according to the laws of the State of territory where they

reside, to consent to mental health treatment.

OBJECTION: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 69.

70. Persons under the age of eighteen (18) are permitted, according to the laws of the State of territory where they reside, to consent to reproductive health care services.

OBJECTION: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 70.

71. Persons under the age of eighteen (18) are permitted, according to the laws of the State of territory where they reside, to enter into the labor force and seek and hold gainful employment.

OBJECTION: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 71.

72. Persons under the age of eighteen (18) are permitted, according to the laws of the State of territory where they reside, to obtain a declaratory judgment from a court of competent jurisdiction that they are emancipated from their parents.

OBJECTION: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 72.

73. None of the fact witnesses identified by you for possible testimony in the trial of this matter has relevant, admissible testimony regarding the ban on covered political contributions by minors.

OBJECTION: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 73, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully admit or deny the subject matter of Request to Admit No. 73, in light of the fact that the United States has designated every fact witness thus far designated by each party to the litigation and the United States does not yet know the subject of the testimony of each witness in the case. Consistent with Fed.

R. Civ. P. 36(a), the United

[end of page 20]

States has made an inquiry reasonable in the extraordinary circumstances of this litigation, and the information known or readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 73.

74. None of the expert witnesses identified by you for possible testimony in the trial of this matter has relevant, admissible testimony regarding the ban on covered political contributions by minors.

OBJECTION: Subject to the Sept. 3, 2002 General Objections and Specific Objections to Request to Admit No. 74, the United States lacks the necessary information and knowledge to respond, and consequently cannot truthfully admit or deny the subject matter of Request to Admit No. 73, because the United States has designated experts as rebuttal experts who may cover the subject of minor contributions. Consistent with Fed. R. Civ. P. 36(a), the United States has made an inquiry reasonable in the extraordinary circumstances of this litigation, and the information known or readily obtainable by the United States is insufficient for the United States to admit or deny Request to Admit No. 73.

75. For each of the minor plaintiffs, the act of making a covered political contribution will be prohibited by federal law upon the effective date of the Act.

OBJECTION: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 75.

76. For each of the minor plaintiffs, the act of making a covered political contribution expresses their support for the beliefs, views, and opinions of the candidate for federal office or the committee of a political party.

OBJECTION: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 76.

77. For each of the minor plaintiffs, the act of making a

covered contribution expresses their support for the election of a candidate for federal office or the committee of a political party.
[end of page 21]

OBJECTION: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 77.

78. For each of the minor plaintiffs, the act of making a covered political contribution evidences the agreement of the minor plaintiff with the beliefs, views, and opinions of the candidate for federal office or the committee of a political party.

OBJECTION: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 78.

79. For each of the minor plaintiffs, the restriction imposed by the Act would be inapplicable to them but for their being less than eighteen (18) years of age.

OBJECTION: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 79.

80. Making a political contribution is an exercise of fundamental constitutional rights.

OBJECTION: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 80.

81. The Act treats the minor plaintiffs differently from citizens of the United States who have attained eighteen (18) years of age in the exercise of fundamental constitutional rights based upon their age.

OBJECTION: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 81.

82. Because the Act completely prohibits the minors from engaging in a kind of speech, namely the making of covered political contributions, it is subject to strict scrutiny.

OBJECTION: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 82.

83. Because the Act burdens the exercise of fundamental

constitutional rights, it is subject to strict scrutiny.
[end of page 22]

OBJECTION: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 83.

84. To survive strict scrutiny, the ban on the making of covered political contributions by minors must be narrowly tailored to serve compelling government interests.

OBJECTION: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 84.

85. Alternatives to the complete prohibition of covered political contributions by minors exist.

OBJECTION: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 85.

86. Many of the existing alternatives to such a complete prohibition are adequate to insure that the interests of the government that motivated Congress to enact the Act would be satisfied.

OBJECTION: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 86.

87. No less restrictive alternative to the complete prohibition on covered political contributions by minors was considered by Congress during the floor debates of either House.

OBJECTION: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 87.

88. Enforcing current restrictions on giving in the name of another is less restrictive of the rights of minors to make covered political contributions than the complete prohibition imposed by the Act.

OBJECTION: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 88.

89. A rebuttable presumption that minors under a selected age are not making a covered political donation under their own direction and control is less restrictive of the rights of

minors to make covered political contributions than the complete prohibition imposed by the Act.
[end of page 23]

OBJECTION: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 89.

90. Allowing minors who will be eligible to vote in the general election for a federal office to donate to make covered political contributions during the primary and general elections is less restrictive of the rights of minors to make political contributions than the complete prohibition imposed by he Act.

OBJECTION: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 90.

91. Prosecuting persons who make a contribution in the name of another is a less restrictive means of insuring that the covered political contributions of minors are made by those minors from their independently controlled funds at their own direction.

OBJECTION: *See* Sept. 3, 2002 General Objections and Specific Objection to Request to Admit No. 91.

SUPPLEMENTAL INTERROGATORY

[interrogatory and response thereto omitted]

REQUEST TO PRODUCE DOCUMENTS

[request and response thereto omitted]
[end of page 24]

[certification, subscription and signatures omitted]

UNITED STATES' RESPONSES TO PLAINTIFF REPUBLIC NATIONAL COMMITTEE'S SECOND SET OF INTERROGATORIES TO DEFENDANTS

20. Do you contend, as a matter of historical fact, that the Congress enacted the BCRA pursuant to any Constitutional power other than the Federal Elections Clause, Article I, Section 4 of the United States Constitution? Unless your response is an unqualified negative, identify every constitutional provision that Congress utilized as authority to enact the BCRA, stating in full the factual basis for your belief with regard to each such provision, and identify the documents you believe support your position and any persons known to you who possess documents or information you believe support your position.

RESPONSE: The United States continues to object to this revised Interrogatory because its seeks discovery of legal arguments and relates to pure legal conclusions, which are impermissible under Fed. R. Civ. P. 33 as well as impermissible according to the Court's Order of August 15, 2002.

Subject to the above-noted objection, the General and Specific Objections to this Interrogatory as originally written (July 22, 2002), and pursuant to the Court's Order of August 15, 2002, the United States responds that in enacting Sections 305 and 504 of the BCRA to amend section 315 of the Communications Act, see 47 U.S.C. § 315, Congress invoked its power under the Commerce Clause, as it did when first enacting the Communications Act of 1934, *see* 47 U.S.C. § 151. This response is without prejudice to any argument that, as a matter of law regardless of "historical fact," any other Constitutional power supports the BCRA.

21. Do you contend that differential treatment of political parties relative to individuals, corporations, trade

associations, labor organizations and non-party advocacy groups is necessary to prevent corruption or the appearance of corruption of federal candidates and officeholders? Unless your response is an unqualified negative, please state in full the factual and legal basis for your response, and identify all documents and witnesses you may rely upon to support your position?

RESPONSE: The United States objects to this interrogatory as vague, ambiguous, and misleading as a mischaracterization of BCRA.

[caption omitted]

[end of page 3]

Briefing [obliterated in text]

(October [15], 2002)

ORDERED that the plaintiffs in 8[1] of the 11 actions (collectively, the McConnell group) shall file together one opening brief of no more than 335 pages, one opposition brief of no more than 205 pages, and one reply brief of no more than 160 pages. All legal

[end of page 4]

arguments shall be presented on a title-by-title basis, with a discrete section of each brief devoted to each title. Within each section, the omnibus arguments for or against that title shall be presented first, followed by a separate subsection for those additional arguments advancing different legal theories or different provisions of BCRA by each of the individual plaintiffs.

It is further **ORDERED** that the government defendants (the Federal Election Commission and the Department of Justice, jointly) and intervening Members of Congress (intervenors) shall file together one opening brief of no more than 395 pages, one opposition brief of no more than 245 pages, and one reply brief of no more than 180 pages. As with the McConnell group, all arguments shall be presented on a title-by-title basis, with a discrete section of each brief

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[1] *National Rifle Association* (Civ. No. 02-581), *McConnell* (Civ. No. 02-582), *Echols v. FEC* (Civ. No. 02-633), *National Associations of Broadcasters* (Civ. No. 02-753), *AFL-CIO v. FEC* (02-754), *Republican National Committee* (Civ. No. 02-874), and *California Democratic Party* (Civ. No. 02-875). The Court subtracted the Paul plaintiffs from the McConnell group in order to treat the description of their brief separately.

devoted to each title.

It is further **ORDERED** that the McConnell group's opening brief be divided as follows:

- The McConnell group's omnibus portion of the brief shall be divided on a title-by-title basis and shall not exceed 100 pages in the aggregate.
- The RNC plaintiffs' challenges to Titles I & III of BCRA shall be addressed on a title-by-title basis and shall not exceed 75 pages in the aggregate.
- The California Democratic Party ("CDP") plaintiffs shall address their challenges to Title I in no more than 50 pages.
- The NRA plaintiffs shall address their challenges to Title II in no more than

[end of page 5]

50 pages.

- The Chamber of Commerce plaintiffs shall address their challenges to Title II in no more than 20 pages.
- The AFL-CIO plaintiffs shall address their challenges to Title II in no more than 20 pages.
- The ACLU shall address its challenges to Title II in no more than 20 pages.

It is further **ORDERED** that the defendants' opening brief shall be divided as follows:

- The Federal Election Commission and the Department of Justice shall address, jointly, the plaintiffs' constitutional challenges to BCRA on a title-by-title basis and their arguments shall not exceed 225 pages in the aggregate.
- The intervenors shall address the plaintiffs' constitutional challenges to BCRA on a title-by-title basis and their arguments shall not exceed 170 pages in the aggregate.

It is further **ORDERED** that the McConnell group's opposition brief be divided as follows:

- The McConnell group's omnibus opposition to the defendants' opening brief shall be presented on a title-by-title basis and not exceed 75 pages in the aggregate.
- The RNC plaintiffs' opposition to the defendants' opening brief shall be presented on a title-by-title basis and not exceed 50 pages in the aggregate.

[end of page 6]

- The CDP plaintiffs' opposition to the defendants' opening brief shall be presented on a title-by-title basis and not exceed 25 pages in the aggregate.
- The NRA plaintiffs' opposition to the defendants' opening brief shall be presented on a title-by-title basis and not exceed 25 pages in the aggregate.
- The Chamber of Commerce plaintiffs' opposition to the defendants' opening brief shall be presented on a title-by-title basis and not exceed 10 pages in the aggregate.
- The AFL-CIO plaintiffs' opposition to the defendants' opening brief shall be presented on a title-by-title basis and not exceed 10 pages in the aggregate.
- The ACLU's opposition to the defendants' opening brief shall be presented on a title-by-title basis and not exceed 10 pages in the aggregate.

It is further **ORDERED** that the defendants' opposition brief be divided as follows:

- The FEC and DOJ's opposition to the plaintiffs' opening briefs shall be presented on a title-by-title basis and not exceed 135 pages in the aggregate.
- The intervenors' opposition to the plaintiffs' opening briefs shall be presented on a title-by-title basis and not exceed 110 pages in the aggregate.

It is further **ORDERED** that the McConnell group's reply brief be divided as follows:

- The McConnell group's joint omnibus response to the defendants' opposition shall be presented on a title-by-title

basis and not exceed 50 pages in the aggregate.

[end of page 7]

- The RNC plaintiffs' response to the defendants' opposition shall be presented on a title-by-title basis and not exceed 30 pages in the aggregate.
- The CDP plaintiffs' plaintiffs' response to the defendants' opposition shall be presented on a title-by-title basis and not exceed 25 pages in the aggregate.
- The NRA plaintiffs' plaintiffs' response to the defendants' opposition shall be presented on a title-by-title basis and not exceed 25 pages in the aggregate.
- The Chamber of Commerce plaintiffs' response to the defendants' opposition shall be presented on a title-by-title basis and not exceed 10 pages in the aggregate.
- The AFL-CIO plaintiffs' response to the defendants' opposition shall be presented on a title-by-title basis and not exceed 10 pages in the aggregate.
- The ACLU's response to the defendants' opposition shall be presented on a title-by-title basis and not exceed 10 pages in the aggregate.

It is further **ORDERED** that the defendants' reply brief be divided as follows:

- The FEC and DOJ's joint response to the plaintiffs' opposition briefs shall be presented on a title-by-title basis and not exceed 100 pages in the aggregate.
- The intervenors' response to the plaintiffs' opposition briefs shall be presented on a title-by-title basis and not exceed 80 pages in the aggregate.

It is further **ORDERED** that because of the type of challenges and focus of the Thompson, Adams, and Paul plaintiffs, it is the decision of the Court that the plaintiffs in

[end of page 8]

Paul (Civ No. 02-781) and the plaintiffs collectively in the Adams (Civ. No. 02-877) and Thompson plaintiffs (Civ. No.

02-811 (collectively, the Adams group) shall both address their challenges to BCRA in an opening brief consisting of no more than 30 pages, an opposing brief of no more than 20 pages, and a reply brief of no more than 10 pages. As with the other parties, both of these briefs shall present all arguments on a title-by-title basis in discrete sections of the brief.

It is further **ORDERED** that the deadline for the filing of the opening briefs, accompanied by fact witnesses and expert testimony and documentary evidence, is November 6, 2002, opposition briefs are to be filed on November 20, 2002, and reply briefs are to be filed on November 27, 2002.

[end of page 9]

The parties' proposals as to the submission of proposed findings of fact and conclusions of law are taken under advisement and the Court will issue a separate order.

SO ORDERED.

[subscription and signature omitted]

[caption omitted]

[end of page 3]

Order

Upon motion of this Court, it is this 15th day of November 2002 hereby

ORDERED that oral argument in these consolidated actions will take place on Wednesday, December 4 and Thursday, December 5, 2002, according to the following schedule:

[end of page 4]

Wednesday, December 4, 2002

9.00 am - 10.30 am Title I (plaintiffs)

- Arguments by the plaintiffs on the consolidated brief shall include no more than four arguing counsel and shall not exceed eighty minutes.
- Arguments by the Paul plaintiffs shall not exceed ten minutes.

10.45 am - 12.15 am Title I (defendants, intervenors)

1.45 pm - 3.15 pm Title II (plaintiffs)

- Arguments by the plaintiffs on the consolidated brief shall include no more than five arguing counsel and shall not exceed eighty minutes.
- Arguments by the Paul plaintiffs shall not exceed ten minutes.

3.30 pm - 5.00 pm Title II (defendants, intervenors)

Wednesday, December 4, 2002 (sic)

2.30 pm - 3.15 Title III (plaintiffs)

- Arguments by the plaintiffs on the consolidated brief shall include no more than three arguing counsel and shall not exceed thirty minutes.
- Arguments by the Adams plaintiffs shall not exceed ten minutes, and arguments for the Paul plaintiffs shall not exceed five minutes.

3.15 pm - 4.00 pm Title III (defendants, intervenors)

4.15 pm - 4.45 pm Title V (plaintiffs)

- Arguments by the plaintiffs on the consolidated brief shall include no more than two arguing counsel and shall not exceed thirty minutes. Any arguments on the issue of the lowest unit charged shall be presented during arguments on Title V, not Title III.

4.45 pm - 5.15 pm Title V (defendants, intervenors)

[end of page 5]

It is further **ORDERED** that counsel for the plaintiffs on the omnibus brief shall meet and confer and by 4.00 pm on Friday, November 23, 2002 submit to the Court–by delivering to the Clerk's Office in person and filing with the intake representative–the names of arguing counsel, the issue(s) each counsel plans to address, and the length of each counsel's argument. Plaintiffs' counsel are reminded that any rebuttal time must come from the total assigned time (per Title). Counsel for the Adams and Paul plaintiffs shall also each submit the name(s) of arguing counsel and the issues counsel plan to address.

It is further **ORDERED** that all counsel for the defendants and intervenors meet and confer and by 4.00 pm on Friday, November 22, 2002 submit to the Court–by delivering to the Clerk's Office in person and filing with the intake representative–the names of arguing counsel (up to a maximum of four per Title), the issue(s) each counsel plans to address, and the length of each counsel's argument.

The full scheduling order will issue upon receipt of the above information.

SO ORDERED.

[subscription and signature omitted]

[caption omitted]

[end of page 3]

ORDER

(November 26, 2002)

It is hereby **ORDERED** that the following format will apply to the oral argument scheduled to begin at 9.00 am on Wednesday, December 4, 2002, and to resume at 2.30 p.m. on Thursday, December 5, 2002, in the Ceremonial Courtroom, 6th Floor of the United States Courthouse:

[end of page 4]

Title I (Soft Money)

Plaintiffs (9.00 - 10.30)

Party /Length	Counsel
•Omnibus Plaintiffs 20 mins.	Kenneth W. Starr
•California Party Plaintiffs 20 mins.	Deborah B. Caplan
•Thompson Plaintiffs 5 mins.	Sherri L. Wyatt
•RNC Plaintiffs 35 mins.	Bobby R. Burchfield
•Paul Plaintiffs (Free Press) 10 mins.	Herbert W. Titus

Break

Defendants (10.45 - 12.15)

Party/Length	Counsel
•FEC 45 mins.	Richard B. Bader
• Intervenors (First Amendment)25 mins.	RogerW. Witten
• Intervenors (Tenth AmendmentEqual Protection 20 mins.	Randolph D. Moss

Lunch Break

Wednesday, December 4, 2002, 1.45 pm

Title II (Electioneering Communications)

Plaintiffs (1.45 - 3.15)

Party/Length	Counsel
•Omnibus Plaintiffs 43 mins.	Floyd Abrams
•AFL-ClO Plaintiffs 9 mins.	Laurence E. Gold
•ACLU 9 mins.	Joel M. Gora

•NRA Plaintiffs 19 mins.	Charles J. Cooper
•Paul Plaintiffs (Free Press) 10 mins.	Herbert W. Titus

Break

Defendants (3.30 - 5.00)

Party/Length	Counsel
•DOJ 40 mins.	James J. Gilligan
•Intervenors 35 mins.	Seth P. Waxman
•FEC 15 mins.	David Kolker

[end of page 5]

Thursday, December 5, 2002, 2.30 p.m.

Title II (Coordinated Expenditures)

Plaintiffs (2.30 - 3.00)

PartyLength	Counsel
• Omnibus/Chamber Plaintiffs 25 mins.	Jan Witold Baran
•California Party Plaintiffs 5 mins.	Charles H. Bell

Defendants (3.00 - 3.25)

Party	Length	Counsel
•FEC 15 mins.		David Kolker
•Intervenors 10 mins.		Charles G. Curtis

Title III (Sections 304, 307, 316, 318 & 319

Plaintiffs (3.25 - 3.50)

Party/ Length	Counsel
• Echols Plaintiffs (Section 318) 10 mins.	James M. Henderson
• Adams Plaintiffs (Sections 304, 307, 316 & 319) 10 mins.	John C. Bonifaz
• Paul Plaintiffs (Sections 304, 307, 316 & 319) 5 mins.	Herbert W. Titus

Break

Defendants (4.05 - 4.35)

Party/ Length	Counsel
• FEC (Sections 304, 316, 318 & 319) 15 mins.	Stephen Hershkowitz

• Intervenors (Section 304,
316 & 319 15 mins. Bradley S. Phillips

Title III (Lowest Unit Charge), Title V

Plaintiffs (4.35 - 4.55)

Party/ Length	Counsel
•Omnibus/NAB Plaintiffs 20 mins.	Floyd Abrams

Defendants (4.55 - 5.15)

Party / Length	Counsel
•DOJ/FEC 20 mins.	Michael Raab

[end of page 6]

It is further **ORDERED** that in view of the number of arguing counsel and for the court's convenience, rebuttal will be permitted only to respond to the court's questions, if any.

It is further **ORDERED** that each arguing counsel file with the Court on or before Monday, December 2, 2002, a local contact number at which he or she can be reached beginning on Tuesday, December 3, 2002, in the event of inclement weather or other emergency.

It is further **ORDERED** that each arguing counsel will be seated at counsel table in the well of the Court. In addition, there will be reserved seating in the courtroom for only one person, who can be either counsel or a representative of the party, for each party in the eleven suits (minors are counted as one party). A list of those persons is to be provided to Sheldon Snook, Administrative Assistant to Chief Judge Hogan, at fax number 202-354-3412, no later than 12.00 noon on December 3, 2002, in order to secure reserved seating. Only those persons identified on the list will be eligible for reserved seating in the courtroom.

SO ORDERED.

[subscription and signature omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATOR MITCH McCONNELL, et al.,	)	
Plaintiffs,	)	Civil Action No. 02-0582 (CKK, KLH, RJL)
v.	)	
FEDERAL ELECTION COMMISSION, et al.,	)	**CONSOLIDATED ACTIONS**
Defendants.	)	

PLAINTIFF AMERICAN CIVIL LIBERTIES UNION MOTION FOR STAY PURSUANT TO RULE 62 (C)

Upon the attached affidavit of Anthony Romero, Executive Director of the American Civil Liberties Union, and incorporating by reference the relevant points in the Memorandum of Points and Authorities filed on May 7, 2003 by the National Rifle Association, the American Civil Liberties Union hereby moves for a stay pursuant to FRCP 62(C), pending appeal to the Supreme Court of the United States of this Court's May 2, 2003 Judgment with respect to the constitutionality of the definitions of "electioneering communications" contained in Title II of the Bipartisan Campaign Reform Act ("BCRA") Pub. L. No. 107-155.

The reasons for this motion, more fully set out in the Affidavit of Anthony Romero, are as follows:

First, if not stayed pending appeal, this Court's decision of May 2nd will cause irreparable injury to the American Civil Liberties Union in the immediate and near future. The net effect of this Court's decision - in upholding the so-called "fallback definition of "electioneering communication" while striking the limiting clause ("suggestive of no plausible meaning other than an exhortation to vote...") is that any broadcast communication paid for by the ACLU which can be deemed one that "promotes" or "supports" or "attacks" or "opposes" a candidate for Federal office (regardless of whether the communication expressly advocates a vote for or against that candidate) is subject to the full brunt of the Federal Election Campaign Act.

According to published reports, the Bush Administration is preparing new legislation, dubbed Patriot Act II, which would enhance the already broad powers granted to law enforcement under USA PATRIOT Act enacted in the wake of September 11th. It is vital that the country engage in a full and informed debate about these proposals and their civil liberties costs. The ACLU is committed to playing a central role in that debate and to using all the advocacy tools at its disposal, including radio and broadcast ads targeting key members of congress if we deem it appropriate, to ensure that civil liberties are not further eroded by legislation that is hastily adopted.

This court's May 2 decision confronts the ACLU with an intolerable and unacceptable dilemma. We can continue to speak out on these vital civil liberties issues at the risk of civil or criminal penalties if it is determined by governmental authorities that the speech comes within the Court's wholly new statutory definition of "electioneering communications." Or we can remain silent and not engage in any speech that could even arguably come within that definition until such time - perhaps 6 to 8 months from now - when the Supreme Court finally resolves these issues.

The day before the BCRA was passed, so far as the campaign finance laws were concerned, the ACLU could say anything about elected federal officials who will be running for office unless that speech "expressly advocated" the election or defeat of those officials. The day after this court's decision, so far as the campaign finance laws are concerned, the ACLU cannot say anything about elected federal officials who will be running for office if that speech in any way "promotes" "supports" "attacks" or "opposes" that official. This sea change in the right of non-partisan issue organizations to speak out on the vital issues of the day and the top-level officials who create those issues, should not be implemented until the Supreme Court has had the final say in these historic matters.

Finally, for the reasons set forth more fully in the Memorandum of Points and Authorities of the NRA, staying the enforcement of the fallback definition, and thus reinstating the potential applicability of the primary definition, properly balances the equities between the public interest in proper enforcement of campaign finance laws and the public interest in preserving the full measure of First Amendment freedoms. We adopt the pertinent reasoning and analysis set forth in the NRA's memorandum and therefore and do not submit a separate memorandum of points and authorities.

May 9, 2003

Respectfully Submitted,

Joel M. Gora
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Brooklyn, NY 11201

Of Counsel
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATOR MITCH McCONNELL, et al.,	Plaintiffs,	Civil Action No. 02-0582 (CKK, KLH, RJL)
v.		
FEDERAL ELECTION COMMISSION, et al.,		**CONSOLIDATED ACTIONS**
Defendants.		

DECLARATION OF ANTHONY D. ROMERO

Pursuant to 28 U.S.C.§ 1746, I hereby declare as follows:

1. I am the executive director of the American Civil Liberties Union ("ACLU"), a position I have held since September 2001. In that capacity, I am responsible for managing the operations of the entire organization – including its legislative activities. My responsibilities also include raising funds for the organization through membership and other fundraising activities.

2. The ACLU is a nationwide, non-profit, non-partisan organization with approximately 400,000 members dedicated to the principles of liberty and equality embodied in the Constitution. It is also a tax-exempt organization under § 510(c)(4) of the Internal Revenue Code. Membership dues finance the organization's activities. The ACLU is incorporated in Washington, D.C.

3. I have previously submitted a sworn declaration in this case that is included in the record. Romero Declaration 3 PCS: ACLU 3. In addition to providing membership and organizational information about the ACLU in that declaration, I described the mission and work of the ACLU, including its extensive public education and legislative program. As our membership has grown, from 275,000 to over 400,000 members since 9/11/01, our program has greatly expanded. Thus, while our activities have historically been dependent on earned media coverage of the positions staked out by the ACLU, our growing membership has allowed the organization to increase its paid advertising significantly. Accordingly, we have re-deployed our resources to allow for print and broadcast advertising. The reasons for this reallocation of resources are explained in my earlier statement. Romero Declaration ¶ 8: 3 PCS, ACLU 3.

4. The adoption of Title II of the Bipartisan Reform Act threatened to constrict the ability of the ACLU to participate in the public debate about numerous issues that are critical to the organization and its constituents. The broad sweep of the 30/60 day rule prohibiting broadcast communications that merely refer to a candidate virtually foreclosed any discussion of public issues that sought to hold federal candidates accountable for their actions. The adoption of the fall back definition as modified by this Court in its decision of May 2, 2003 potentially restricts even more speech than the provision that was enjoined by the Court. The new definition of electioneering upheld by the Court prohibits any broadcast communication by the ACLU *at any time* that can be construed as promoting, supporting, opposing, or attacking a candidate. I am concerned that any ACLU advertisement which is critical of the policy position or vote of a member of Congress, or can be construed as critical of a member of Congress, may provide the basis for federal prosecution. Yet, it is more important now than ever that issues involving the unprecedented assault on civil

liberties following the 9/11 tragedy be fully discussed and that candidates be held accountable for their actions. The rush to adopt regressive post 9/11 legislation poses the single greatest threat to civil liberties since the McCarthy Era and it is not possible to discuss these issues or influence legislation in a meaningful way without identifying candidate positions.

5. Congress passed the USA PATRIOT Act immediately after September 11, 2001. The Act gave new sweeping powers to the federal government to conduct investigations and surveillance inside the United States. The Act was passed with almost no debate and before the ACLU and others could organize any effective opposition.

6. According to published reports, the Justice Department is now contemplating new legislation, the Domestic Security Enhancement Act (Patriot Act II), that would further expand the government's surveillance powers and further diminish the constitutional checks and balances on law enforcement. The ACLU has already expressed its determination to oppose Patriot Act II if it is introduced. Because of the critical civil liberties issues at stake, it is vital that the ACLU remain free to use all the advocacy tools at its disposal. This may well include, if we deem it appropriate as part of our legislative strategy, radio and broadcast ads targeted at key legislative figures.

7. While it is impossible to predict the timing or course of that legislative debate, it is certainly possible, and perhaps even probable, that it will take place before the Supreme Court can render a final decision on the constitutionality of the B.C.R.A. In the interim, the ACLU is facing the prospect of criminal penalties if the content of any ad we choose to broadcast is construed as supporting, opposing, promoting, or attacking a candidate for federal office. Given that risk, the ability of the ACLU to speak out on matters that go to the very core of the ACLU's mission will necessarily be hampered unless the stay is granted.

8. I declare under penalty of perjury, that the foregoing is true and correct.

Executed on this 9th day of May 2003.

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Anthony D. Romero